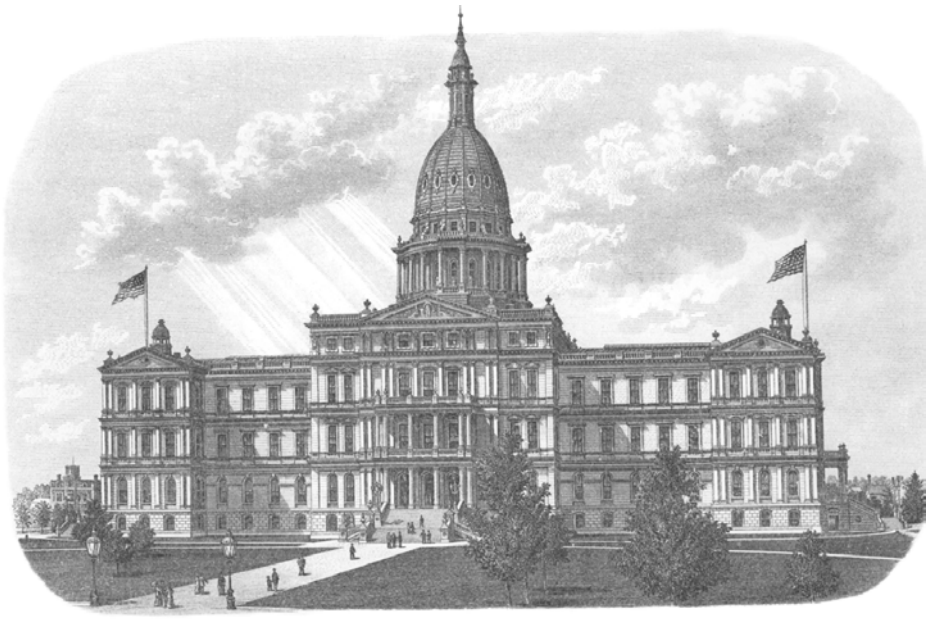
Michigan Register

Issue No. 10– 2007 (Published June 15, 2007)



GRAPHIC IMAGES IN THE

MICHIGAN REGISTER

COVER DRAWING

Michigan State Capitol:

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

PAGE GRAPHICS

Capitol Dome:

The architectural rendering of the Michigan State Capitol's dome is the work of Elijah E. Myers, the building's renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers' fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19th century have survived. Michigan is fortunate that many of Myers' designs for the Capitol were found in the building's attic in the 1950's. As part of the state's 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

East Elevation of the Michigan State Capitol:

When Myers' drawings were discovered in the 1950's, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building's recent restoration (1989-1992), this drawing was commissioned to recreate the architect's original rendering of the east (front) elevation.

(Michigan Capitol Committee)

Michigan Register

Published pursuant to § 24.208 of
The Michigan Compiled Laws

Issue No. 10— 2007
(This issue, published June 15, 2007, contains
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Peter Plummer, Executive Director, State Office of Administrative Hearings and Rules; **Deidre O'Berry**, Administrative Rules Analyst for Operations and Publications.

Jennifer M. Granholm, Governor

John D. Cherry Jr., Lieutenant Governor

PREFACE

PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The State Office of Administrative Hearings and Rules publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

MCL 24.208 states:

Sec. 8 (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders.
(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.
(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.
(d) Proposed administrative rules.
(e) Notices of public hearings on proposed administrative rules.
(f) Administrative rules filed with the secretary of state.
(g) Emergency rules filed with the secretary of state.
(h) Notice of proposed and adopted agency guidelines.
(i) Other official information considered necessary or appropriate by the State Office of Administrative Hearings and Rules.
(j) Attorney general opinions.
(k) All of the items listed in section 7(1) after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, 1978 PA 368, MCL 333.22215 and 333.22217.

(2) The State Office of Administrative Hearings and Rules shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the State Office of Administrative Hearings and Rules may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall transmit a copy of the proposed rules and notice of public hearing to the State Office of Administrative Hearings and Rules for publication in the Michigan register.

MCL 4.1203 states:

Sec. 203. (1) The Michigan register fund is created in the state treasury and shall be administered by the State Office of Administrative Hearings and Rules. The fund shall be expended only as provided in this section.

(2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.

(3) The Michigan register fund shall be used to pay the costs preparing, printing, and distributing the Michigan register.

(4) The department of management and budget shall sell copies of Michigan register at a price determined by the State Office of Administrative Hearings and Rules not to exceed cost of preparation, printing, and distribution.

(5) Notwithstanding section 204, beginning January 1, 2001, the State Office of Administrative Hearings and Rules shall make the text of the Michigan register available to the public on the internet.

(6) The information described in subsection (5) that is maintained by the State Office of Administrative Hearings and Rules shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the State Office of Administrative Hearings and Rules shall be made available in the shortest feasible time after it is made available to the State Office of Administrative Hearings and Rules.

(7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).

(8) The State Office of Administrative Hearings and Rules shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).

(9) As used in this section, "Michigan register" means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

CITATION TO THE MICHIGAN REGISTER

The *Michigan Register* is cited by year and issue number. For example, 2001 MR 1 refers to the year of issue (2001) and the issue number (1).

CLOSING DATES AND PUBLICATION SCHEDULE

The deadlines for submitting documents to the State Office of Administrative Hearings and Rules for publication in the *Michigan Register* are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the *Michigan Register*.

The State Office of Administrative Hearings and Rules is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, State Office of Administrative Hearings and Rules, Ottawa Building - Second Floor, 611 W. Ottawa, P.O. Box 30695, Lansing, MI 48933.

RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE

The *Michigan Administrative Code* (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the *Michigan Register*. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the *Register* during a given calendar year. Emergency rules published in an issue of the *Register* are noted in the annual supplement to the Code.

SUBSCRIPTIONS AND DISTRIBUTION

The *Michigan Register*, a publication of the State of Michigan, is available for public subscription at a cost of $400.00 per year. Submit subscription requests to: State Office of Administrative Hearings and Rules, Ottawa Building - Second Floor, 611 W. Ottawa, P.O. Box 30695, Lansing, MI 48933. Checks Payable: State of Michigan. Any questions should be directed to the State Office of Administrative Hearings and Rules (517) 335-2484.

INTERNET ACCESS

The *Michigan Register* can be viewed free of charge on the Internet web site of the State Office of Administrative Hearings and Rules: www.michigan.gov/cis/0,1607,7-154-10576_35738---,00.html

Issue 2000-3 and all subsequent editions of the *Michigan Register* can be viewed on the State Office of Administrative Hearings and Rules Internet web site. The electronic version of the *Register* can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Peter Plummer, Executive Director
State Office of Administrative Hearings and Rules

2007 PUBLICATION SCHEDULE

Issue No.	Closing Date for Filing or Submission Of Documents (5 p.m.)	Publication Date
1	January 15, 2007	February 1, 2007
2	February 1, 2007	February 15, 2007
3	February 15, 2007	March 1, 2007
4	March 1, 2007	March 15, 2007
5	March 15, 2007	April 1, 2007
6	April 1, 2007	April 15, 2007
7	April 15, 2007	May 1, 2007
8	May 1, 2007	May 15, 2007
9	May 15, 2007	June 1, 2007
10	June 1, 2007	June 15, 2007
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23	December 15, 2007	January 1, 2008
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EXECUTIVE ORDERS AND EXECUTIVE REORGANIZATION ORDERS

ADMINISTRATIVE RULES
FILED WITH THE SECRETARY OF STATE

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(f) Administrative rules filed with the secretary of state."

ADMINISTRATIVE RULES

SOAHR 2005-029

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

BOARD OF MANAGERS

VETERANS HOME RULES

Filed with the Secretary Of State on May 24, 2007

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the board of managers by section 8 of 1885 PA 152, MCL 36.8 and Executive Order 1991-7, MCL 36.1)

R 32.71, R 32.72, R 32.73, R 32.74, R 32.75, R 32.76, R 32.77, R 32.78, R 32.79, R 32.80, R 32.81, R 32.82, R 32.83, R 32.84, R 32.85, R 32.86, R 32.87, R 32.88, and R 32.89 are added to the Michigan Administrative Code as follows:

R 32.71 Purpose.
Rule 1. The veterans home rules are created to provide substantive and procedural due process to members of the homes and the public; to assure the continued financial stability of the homes; to prevent and prohibit fraudulent admissions, continued care and unjust enrichment; and, to maximize the availability of housing and care to qualified veterans and their family members.

R 32.72 Definitions.
Rule 2. As used in these rules:
(1) "Administrator" means the chief executive officer of a state veterans home, or his or her designated representative.
(2) "Applicant" means an individual who is applying for admission to a state veterans home.
(a) "Financially sufficient applicant" means an individual who is applying for admission to a state veterans home, and who is not an indigent and/or whose non-excluded assets exceed the indigent criteria.
(b) "Financially insufficient applicant" means an individual who is applying for admission to a state veterans home, and who is an indigent and/or whose non-excluded assets do not exceed the indigent criteria.
(3) "Arrearage" means the cost of care a home provides less the amount of funds that a member has paid to the state for the cost of care. An arrearage is a debt owed by a member or his or her estate to the state of Michigan.
(4) "Asset" means the valuable property of an applicant or member.
(5) "Asset divestment" means the disposing, transfer, gifting, conversion, or giving away of assets for less than fair market value.

(6) "Asset restriction" means the moving or transferring of assets, thereby making them unavailable to pay the cost of care.

(7) "Board" means the board of managers, as established by 1885 PA 152, MCL 36.2.

(8) "Contract" means the written agreement between a member and the home.

(9) "Cost of care" means the monthly amount set by the Board at the start of each fiscal year.

(10) "Department" means the department of military and veterans affairs.

(11) "Department of veterans affairs" or "DVA" means the federal agency tasked with operating and maintaining federal programs for veterans benefits.

(12) "Eligible veteran" means an individual who meets either of the following conditions:

(a) Was part of a military organization or unit recognized by the department of defense and/or the state of Michigan that had its principle nexus in Michigan at any time during the individual's service.

(b) Was part of a military organization or unit recognized by the department of defense and/or the state of Michigan and who is a resident of the state of Michigan at the time of application for admission to a state veterans home.

(13) "Home" means a state veterans home, including the Grand Rapids Home for Veterans and the D.J. Jacobetti Home for Veterans.

(14) "Homestead" means the primary residence of an applicant, member, or spouse of an applicant or member.

(15) "Indigent" means an individual who is disabled by disease, wounds or otherwise, who has no adequate means of support, and by reason of such disability is incapable of earning a living and is otherwise dependent on public or private charity, as defined in section 11 of 1885 PA 152, MCL 36.11.

(16) "MCL" means Michigan compiled laws.

(17) "Member" means an individual who has been admitted to a state veterans home and may be either of the following:

(a) "Financially sufficient member" means an individual who has been admitted to a state veterans home, and who is not an indigent and/or whose non-excluded assets exceed the indigent criteria.

(b) "Financially insufficient member" means an individual who has been admitted to a state veterans home, and who is an indigent and/or whose non-excluded assets do not exceed the indigent criteria.

(18) "Resident" means an individual who is living in the state voluntarily with the intention of making his or her permanent home there.

(19) "Responsible party" means either of the following:

(a) The spouse of an applicant, member, or eligible veteran.

(b) An individual with the legal authority to act on behalf of an applicant, member, or eligible veteran.

(20) "State" means the state of Michigan.

(21) "Substantial evidence" means evidence that a reasonable person would accept as sufficient to support a conclusion.

R 32.73 Eligibility for admission; continued care.

Rule 3. (1) Before entering into a contract for admission, the administrator will determine whether the applicant meets the criteria for admission as specified in section 11 of 1885 PA 152, MCL 36.11, or section 1 of 1921 PA 15, MCL 36.31. The applicant must provide substantial evidence to establish that he or she is an eligible veteran.

(2) The home may refuse admission to applicants whose medical conditions and/or disabilities exceed the level of service provided by the home.

(3) In determining whether to admit an applicant, the home will consider the medical diagnosis of the applicant's actual or suspected conditions, the classifications of risk potential, the ability of the home to provide adequately and appropriately for the applicant's medical and social needs, and the applicant's ability and willingness to adapt to the home's environment.

(4) The home will provide continued care for any member whose medical conditions and/or disabilities change or worsen after admission, provided that the member's medical conditions and/or disabilities do not exceed the level of service provided by the home. If the member's level of care exceeds what the home is able to provide, the home will attempt to transfer the member to an appropriate treatment center.

R 32.74 Involuntary transfer and discharge.

Rule 4. (1) The home may involuntarily transfer or discharge a member for 1 or more of the following reasons:

(a) Medical reasons.

(b) The member's welfare.

(c) The welfare of other members or home employees.

(d) Non-payment for the member's stay.

(2) Policies regarding involuntary transfers and discharges will be established by the board.

R 32.75 Holding bed open during temporary absence of member.

Rule 5. (1) If a member is temporarily absent from the home for emergency medical treatment, the home will hold the bed open for the member for at least 10 days, if there is a reasonable expectation that the member will return within that period of time and the home receives payment for each day the member is absent from the home.

(2) If a patient is temporarily absent from the home for therapeutic reasons as approved by a physician, the home will hold the bed open for 30 days, if there is a reasonable expectation that the member will return within that period of time. Personal leaves of absence for therapeutic reasons are limited to 30 days per year.

(3) When a member's absence is longer than specified under subrule (1) or (2) of this rule, or both, the member may return to the home for the next available bed.

R 32.76 Financial disclosure.

Rule 6. (1) In determining financial eligibility for admission or continued care, a financially insufficient applicant, financially insufficient member, or responsible party must make full and honest disclosure of all current assets, as well as all assets held within 3 years before the date of application.

(2) Financially sufficient applicants, financially sufficient members, and responsible parties who do not have an arrearage and who are paying the cost of care are not required to disclose asset information.

(3) Applicants and/or members must fully disclose information requested by the administrator and must authorize the release of information as requested by the administrator.

R 32.77 Financial responsibility.

Rule 7. (1) Financially sufficient members must pay the cost of care.

(2) Financially insufficient members must pay for care in accordance with the board's approved schedules and formulas.

(3) Any amounts not paid are considered an arrearage. The state may file an appropriate legal proceeding at any time to recover an arrearage owed.

R 32.78 Asset divestment; asset restriction.

Rule 8. (1) Divestment of assets during the 36 months before the date of application to a home subjects an applicant to an admission disqualification period.

(2) Restriction of assets during the 36 months before the date of application to a home subjects an applicant to an admission disqualification period.

(3) An applicant must not divest assets after application or admission to a home.
(4) An applicant must not restrict assets after application or admission to a home.

R 32.79 Exempt assets.

Rule 9. (1) The exempt dollar amount for a single applicant or member is $2,000. The exempt dollar amount for a married applicant or member is $25,000. Assets exempt from this dollar amount include all of the following:
(a) The homestead of a married applicant or member.
(b) An automobile.
(c) An irrevocable or prepaid funeral/burial contract up to an amount determined by the board.
(2) The board may determine if the homestead of a single applicant or member is an exempt asset. In making its decision, the board may consider various reasons for exemption of the homestead of a single applicant or member, including the possibility that the applicant or member may recover his or her health and return home.

R 32.80 Asset divestment or restriction at time of application; verification; admission disqualification period; waiver of disqualification period.

Rule 10. (1) If an applicant has divested or restricted an asset during the 36 months before the date of application, the applicant must provide verification of the date and amount of the divestment or restriction.
(2) If the home believes that an applicant has divested or restricted an asset during the 36 months before the date of application, the applicant may be asked to provide verification that the divestment or restriction did not occur.
(3) The length of an admission disqualification period is determined by dividing the value of the divested or restricted asset or assets by the monthly cost of care.
(4) A period of admission disqualification will begin with the month in which the divestment or restriction occurred.
(5) A period of admission disqualification will take place in whole-month increments, up to a maximum of 36 months.
(6) An admission disqualification period may be waived to facilitate immediate admission, provided that the applicant agrees to pay the cost of his or her care until such time as the combined value of the divested or restricted assets and any remaining non-exempt assets have been used to pay the cost of care. The applicant will pay for the cost of care for the remainder of the disqualification period or until any remaining non-exempt assets have been utilized, whichever is longer.

R 32.81 Asset divestment or restriction after application or admission.

Rule 11. (1) If a divestment or restriction of assets occurs after application but before admission, the applicant is ineligible for admission unless the applicant pays the cost of care until such time as the combined value of the divested or restricted assets and any remaining non-exempt assets have been used to pay the cost of care.
(2) If an asset divestment or restriction occurs after admission, the member may be discharged unless the member pays the cost of care until such time as the combined value of the divested or restricted assets and any remaining non-exempt assets have been used to pay the cost of care.

R 32.82 Contract for admission.

Rule 12. There will be a contract for admission between a member and a home.

R 32.83 Right to compliance conference; grounds; written notice; appearance by letter; date, time, and location of compliance conference; stay pending decision.

Rule 13. (1) An applicant, member, or responsible party may request a compliance conference with the home in the event of any the following:

A denial of admission to a state veterans home.

A denial of continued care at a state veterans home.

A decision to involuntarily transfer or discharge a member.

A determination of an amount owed.

A determination of "financially sufficient" or "financially insufficient."

A determination of asset divestment or restriction.

(2) To request a compliance conference, the applicant, member, or responsible party must provide written notice to the home administrator that he or she wishes to contest the denial of admission to a state veterans home, the denial of continued care at a state veterans home, the decision to involuntarily transfer or discharge a member, the determination of an amount owed, the determination of "financially sufficient" or "financially insufficient," or the determination of asset divestment or restriction. Written notice must include all of the following:

(a) The date.

(b) The name of the person providing notice.

(c) The name of the affected applicant, member, or responsible party.

(d) The basis for the objection.

(e) All documents that support the objection.

(f) Any other pertinent documents that the person providing notice wants the home to consider.

(3) A compliance conference will be conducted at a reasonable time and date, to be determined by the home administrator. The location of a compliance conference will be the home where the member resides or, in the case of applicants not yet admitted to a state veterans home, the home where application was made. The home administrator may accept a letter from the applicant, member, or responsible party, instead of the applicant's, member's, or responsible party's personal appearance at a compliance conference. The applicant, member, or responsible party must notify the home administrator, in writing, that he or she wishes to appear by letter before the start of the scheduled compliance conference.

(4) Notice of the time, date, and location of compliance conference will be mailed to the applicant, member, or responsible party requesting a compliance conference at least 10 business days before the date of the compliance conference.

(5) Requesting a compliance conference under this subrule will automatically stay a member's transfer or discharge pending a decision. The automatic stay requirement of this subrule does not apply in any of the following instances:

(a) If an emergency transfer or discharge is mandated by the member's health care needs.

(b) If the transfer or discharge is mandated by the physical safety of other patients and/or home employees.

(c) If the transfer or discharge is later agreed to by the member or the responsible party.

R 32.84 Denial or dismissal of request for compliance conference.

Rule 14. (1) The home will deny or dismiss the request for a compliance conference if any of the following occur:

(a) The request is withdrawn by an applicant, member, or responsible party, in writing, before the date of the compliance conference.

(b) The applicant, member, or responsible party abandons the compliance conference.

(c) The home has no jurisdiction over the matter.

(2) Abandonment occurs if an applicant, member, or responsible party, without good cause, fails to appear at the scheduled compliance conference or fails to submit an appearance by letter.

R 32.85 Home's decision; notice of opportunity to appeal the home's decision; date, time, and location of hearing; telephonic attendance; appearance by letter; waiver.

Rule 15. (1) Within 10 business days following a compliance conference, the home will provide the applicant, member, or responsible party written notice of the home's decision. Written notice will include all of the following:

(a) A statement of what action the home intends to take.

(b) The reasons for the intended action.

(c) The specific rules supporting the action.

(d) An explanation of the applicant's, member's, or responsible party's right to request a hearing before the board.

(e) The circumstances, if any, under which a member's transfer or discharge will be stayed if a hearing is requested.

(2) Within 15 business days of service of the written notice of the home's decision, the applicant, member, or responsible party may request, in writing, a hearing before the board to appeal the decision of the home. Written notice must include all of the following:

(a) The date.

(b) The name of the person requesting a hearing.

(c) The name of the affected applicant, member, or responsible party.

(d) The basis for the appeal.

(e) All documents that support the appeal.

(f) Any other pertinent documents that the person requesting a hearing wants the board to consider.

(3) A hearing will be conducted at a reasonable time, date, and location, to be determined by the board. The board may accept a letter from the applicant, member, or responsible party, instead of the applicant's, member's, or responsible party's personal appearance at a hearing before the board. The applicant, member, or responsible party must notify the board, in writing, that he or she wishes to appear by letter before the start of the scheduled hearing.

(4) Notice of the time, date, and location of hearing will be mailed to the applicant, member, or responsible party requesting a hearing at least 10 business days before the date of the hearing.

(5) A hearing may be conducted via telephone upon written request by the applicant, member, or responsible party. Written request for a hearing via telephone must accompany the applicant's, member's, or responsible party's written request for a hearing before the board in order to be considered.

(6) If the applicant, member, or responsible party does not request a hearing before the board within 15 business days of service of the notice of opportunity to appeal the home's decision, then the applicant, member, or responsible party will be deemed to have waived the right to appeal the home's decision to the board.

R 32.86 Hearing rights of parties.

Rule 16. (1) An applicant, member, or responsible party may do any of the following:

(a) Examine the contents of his case file and all documents and records to be used by the board at the hearing at a reasonable time before the date of the hearing, as well as during the hearing.

(b) Present a case himself or with the aid of legal counsel or an authorized representative

(c) Bring witnesses.

(d) Establish all pertinent facts and circumstances.

(e) Advance any relevant arguments without undue interference.

(f) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(2) The home may be represented by legal counsel and other representatives, staff, or former staff members.

R 32.87 Denial or dismissal of request for hearing.

Rule 17. (1) The home will deny or dismiss the request for a hearing under any of the following conditions:

(a) The request is withdrawn by an applicant, member, or responsible party, in writing, before the hearing date.

(b) The applicant, member, or responsible party abandons the hearing.

(c) The home has no jurisdiction over the matter.

(2) Abandonment occurs if an applicant, member, or responsible party, without good cause therefor, fails to appear at the scheduled hearing or fails to submit an appearance by letter.

R 32.88 Board's decision.

Rule 18. (1) After the hearing and an opportunity to consider the evidence presented, the board may do any of the following:

(a) Affirm the home's decision.

(b) Make a finding that the home's decision be overturned.

(c) Enter into a written settlement of the matter with the applicant, member, or responsible party.

(d) Direct the home to provide the applicant, member, or responsible party with written notice of the opportunity to appeal the board's decision to the circuit court.

R 32.89 Judicial review.

Rule 19. (1) Decisions of the board are appealable to the circuit court as provided by law.

ADMINISTRATIVE RULES

SOAHR 2007-002

DEPARTMENT OF LABOR & ECONOMIC GROWTH

DIRECTOR'S OFFICE

OCCUPATIONAL HEALTH STANDARDS

Filed with the Secretary of State on May 24, 2007

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of labor and economic growth by sections 14 and 24 of 1974 PA 154 and Executive Reorganization Order Nos. 1996-1, 1996-2, and 2003-18, MCL 408.1014, 408.1024, 330.3101, 445.2001, and 445.2011)

R 325.52601 and R 325.52602 are added to the Michigan Administrative code and O.H. Rule 3220 is rescinded as follows:

PART 526. DIPPING AND COATING OPERATIONS

R 325.52601 Adoption of federal O.S.H.A. standards.

Rule 1. (1) The federal occupational safety and health administration's regulations on dipping and coating operations that have been promulgated by the United States department of labor and codified at 29 C.F.R. §1910.122 to §1910.126, Dipping and Coating Operations, March 23, 1999 and appearing in the Federal Register, Volume 64, Number 55 on pp. 13897 to 13912, are adopted by reference in these rules as of the effective date of these rules.

(2) As of the effective date of these rules, §1910.1200, referenced in 29 C.F.R. §1910.123(d) means occupational health standard Part 430. Hazard Communication, R 325.77001 to R 325.77003.

(3) As of the effective date of these rules, Subpart Z, referenced in 29 C.F.R. §1910.124(b)(2) means occupational health standard Part 301. Air Contaminants, R 325.51101 to R 325.51108.

(4) As of the effective date of these rules, §1910.146, referenced in 29 C.F.R. §1910.124(e), means occupational health safety standard Part 490. Permit-Required Confined Spaces, R 325.63001 to R 325.63049.

(5) As of the effective date of these rules, §1910.141(d), referenced in 29 C.F.R. §1910.124(g)(3), mean occupational health standard Part 474. Sanitation, R 4201(4).

(6) As of the effective date of these rules, §1910.134, referenced in 29 C.F.R. §1910.124(j)(4) means occupational health standard Part 451. Respiratory Protection, R 325.60051 to R 325.60052.

(7) As of the effective date of these rules, Subpart S, referenced in 29 C.F.R. §1910.125(e)(1)(i) means general industry safety standard Part 39. Design Safety Standards for Electrical Systems, R 408.13901 to R 408.13902 and Part 40. Electrical Safety-Related Work Practices, R 408.14001 to R 408.14009.

(8) As of the effective date of these rules, §1910.157, referenced in 29 C.F.R. §1910.125(f)(2)(i) means general industry safety standard Part 8. Portable Fire Extinguishers, R 408.10801 to R 408.10839.

(9) As of the effective date of these rules, Subpart L, referenced in 29 C.F.R. §1910.126(g)(7)(ii) means general industry safety standard Part 73. Fire Brigades, R 408.17301 to R 408.17320, Part 8. Portable Fire Extinguishers, R 408.10801 to R 408.10839, Part 9. Fixed Fire Equipment, R 408.10901 to R 408.10999, and Part 6. Fire Exits, Employee Emergency Plans, R 408.10623.

(10) These rules replace occupational health rule 3220.

R 325.52602 Availability of documents.

Rule 2. (1) The federal regulations adopted by reference in these rules are available without cost as of the time of adoption of these rules from the United States Department of Labor, OSHA, 315 West Allegan, Room 315, Lansing, Michigan 48933, or via the internet at website: www.osha.gov, or from the Michigan Department of Labor and Economic Growth, MIOSHA Standards Section, P.O. Box 30643, Lansing, Michigan 48909.

(2) The following Michigan occupational safety and health standards are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of Labor and Economic Growth, MIOSHA Standards Section, 7150 Harris Drive, P.O. Box 30643, Lansing, Michigan, 48909-8143 or via the internet at website: www.michigan.gov/mioshastandards. For quantities greater than 5, the cost, as of the time of adoption of these rules, is 4 cents per page.

(a) General Industry Safety Standard Part 6. Fire Exits, R 408.10601 to R 408.10697.

(b) General Industry Safety Standard Part 8. Portable Fire Extinguishers, R 408.10801 to R 408.10839.

(c) General Industry Safety Standard Part 9. Fixed Fire Equipment, R 408.10901 to R 408.10999.

(d) General Industry Safety Standard Part 39. Design Safety Standards for Electrical Systems, R 408.13901 to R 408.13902.

(e) General Industry Safety Standard Part 40. Electrical Safety-Related Work Practices, R 408.14001 to R 408.14009.

(f) General Industry Safety Standard Part 73. Fire Brigades, R 408.17301 to R 408.17320.

(g) Occupational Health Standard Part 301. Air Contaminants, R 325.51101 to R 325.51108.

(h) Occupational Health Standard Part 430. Hazard Communication, R 325.77001 to R 325.77003.

(i) Occupational Health Standard Part 451. Respiratory Protection, R 325.60051 to R 325.60052.

(j) Occupational Health Standard Part 474. Sanitation, R 4201.

(k) Occupational Health Standard Part 490. Permit-Required Confined Spaces, R 325.63001 to R 325.63049.

(3) The following standards are available from IHS/Global, 15 Inverness Way East, Englewood, Colorado, 80112, USA, telephone number: 1-800-854-7179 or via the internet at website: http://global.ihs.com; at a cost as of the time of adoption of these rules, as stated in this subrule:

(a) American National Standard Institute Z9.1-1971 Open-Surface Tanks--Ventilation and Operation, 1971 edition. Cost $20.00

(b) American National Standard Institute Z9.2-1979 Fundamentals Governing the Design and Operation of Local Exhaust Ventilation Systems, 1979 edition. Cost: $73.00.

(c) National Fire Protection Association NFPA 34-1966 Standard for Dip Tanks Containing Flammable or Combustible Liquids, 1966 edition. Cost: $20.00.

(d) National Fire Protection Association NFPA 34-1995 Standard for Dip Tanks Containing Flammable or Combustible Liquids, 1995 edition. Cost: $39.00.

(e) National Fire Protection Association NFPA 86A-1969 Standard for Ovens and Furnaces, 1969 edition. Cost: $66.00.

(f) ACGIH Industrial Ventilation: A Manual of Recommended Practice, 22nd edition, 1995. Cost: $118.00.

Rule 3220 Rescinded.

ADMINISTRATIVE RULES

SOAHR 2007-003

DEPARTMENT OF LABOR & ECONOMIC GROWTH

DIRECTOR'S OFFICE

GENERAL INDUSTRY SAFETY STANDARDS

Filed with the Secretary of State on May 24, 2007

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of labor and economic growth by sections 16 and 21 of 1974 PA 154 and Executive Reorganization Order Nos. 1996-2 and 2003-18, MCL 408.1016, 408.1021, 445.2001, and 445.2011)

R 408.17601 and R 408.17602 of the Michigan Administrative Code are amended and R 408.17603, R 408.17605, R 408.17607, R 408.17609, R 408.17610, R 408.17612, R 408.17613, R 408.17614, R 408.17615, R 408.17616, R 408.17618, R 408.17620, R 408.17621, R 408.17622, R 408.17623, R 408.17624, R 408.17630, R 408.17631, R 408.17632, R 408.17633, R 408.17636, R 408.17637, R 408.17640, R 408.17641, R 408.17650, R 408.17651, R 408.17696, and R 408.17699 are rescinded from the code as follows:

PART 76. SPRAY FINISHING USING FLAMMABLE AND COMBUSTIBLE MATERIALS

R 408.17601 Adoption of federal O.S.H.A. standards.

Rule 7601. (1) The federal occupational safety and health administration's regulations on spray finishing using flammable and combustible materials that have been promulgated by the United States department of labor and codified at 29 C.F.R. §1910.107, Spray Finishing Using Flammable and Combustible Materials, March 7, 1996 and appearing in the Federal Register, Volume 61, No. 46 on p. 9237 and the federal occupational safety and health administration's regulations on ventilation for spray finishing operations that have been promulgated by the United States department of labor and codified at 29 C.F.R. §1910.94(c), Ventilation for Spray Finishing Operations, March 23, 1999 and appearing in the Federal Register, Volume 64, No. 55 on p. 13909, are adopted by reference in these rules as of the effective date of these rules.

(2) As of the effective date of these rules, Subpart S, referenced in 29 C.F.R. §1910.107(c)(4), (c)(6), (j)(4)(iv), and (l)(1) means general industry safety standard Part 39. Design Safety Standards for Electrical Systems, R 408.13901 to R 408.13902 and Part 40. Electrical Safety-Related Work Practices, R 408.14001 to R 408.14009.

(3) As of the effective date of these rules, §1910.106, referenced in 29 C.F.R. §1910.107(e)(1), means general industry safety standard Part 75. Flammable and Combustible Liquids, R 408.17501.

(4) As of the effective date of these rules, §1910.159, referenced in 29 C.F.R. §1910.107(f)(1), mean general industry safety standard Part 9. Fixed Fire Equipment, Automatic Sprinkler Systems, R 408.10921 to R 408.10928.

(5) These rules replace occupational health rule 3235.

(6) Rules for dip tank operations can be found in occupational health standard Part 526. Dipping and Coating Operations, R 325.52601 to R 325.52602.

R 408.17602 Availability of documents.

Rule 7602. (1) The federal regulations adopted by reference in these rules are available without cost as of the time of adoption of these rules from the United States Department of Labor, OSHA, 315 West Allegan, Room 315, Lansing, Michigan 48933, or via the internet at website: www.osha.gov, or from the Michigan Department of Labor and Economic Growth, MIOSHA Standards Section, P.O. Box 30643, Lansing, Michigan 48909.

(2) The following Michigan occupational safety and health standards are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of Labor and Economic Growth, MIOSHA Standards Section, 7150 Harris Drive, P.O. Box 30643, Lansing, Michigan, 48909-8143 or via the internet at website: www.michigan.gov/mioshastandards. For quantities greater than 5, the cost, as of the time of adoption of these rules, is 4 cents per page.

(a) General Industry Safety Standard Part 9. Fixed Fire Equipment, R 408.10901 to R 408.10999.

(b) General Industry Safety Standard Part 39. Design Safety Standards for Electrical Systems, R 408.13901 to R 408.13902.

(c) General Industry Safety Standard Part 40. Electrical Safety-Related Work Practices, R 408.14001 to R 408.14009.

(d) General Industry Safety Standard Part 75. Flammable and Combustible Liquids, R 408.17501.

(e) Occupational Health Standard Part 526. Dipping and Coating Operations, R 325.52601 to R 325.52602

(3) The following standards are available from IHS/Global, 15 Inverness Way East, Englewood, Colorado, 80112, USA, telephone number: 1-800-854-7179 or via the internet at website: http://global.ihs.com; at a cost as of the time of adoption of these rules, as stated in this subrule:

(a) American National Standard Institute Z9.1-1951 Open-Surface Tanks--Ventilation and Operation, 1951 edition. Cost $20.00

(b) American National Standard Institute Z9.2-1960 Fundamentals Governing the Design and Operation of Local Exhaust Ventilation Systems, 1960 edition. Cost: $32.00.

(c) American Society of Mechanical Engineers, Code for Unfired Pressure Vessels, Section VIII of the ASME Boiler and Pressure Vessel Code, 1968 edition. Cost: $141.00

(d) National Fire Protection Association NFPA 33-1969 Standard for Spray Finishing Using Flammable and Combustible Materials, 1969 edition. Cost: $39.00.

(e) National Fire Protection Association NFPA 86A-1969 Standard for Ovens and Furnaces, 1969 edition. Cost: $66.00.

(f) National Fire Protection Association NFPA 91-1961 Standard for Blower and Exhaust Systems for Vapor Removal, 1961 edition. Cost: $33.00.

R 408.17603 Rescinded.

R 408.17605 Rescinded.

R 408.17607 Rescinded.

R 408.17609 Rescinded.

R 408.17610 Rescinded.

R 408.17612 Rescinded.

R 408.17613 Rescinded.

R 408.17614 Rescinded.

R 408.17615 Rescinded.

R 408.17616 Rescinded.

R 408.17618 Rescinded.

R 408.17620 Rescinded.

R 408.17621 Rescinded.

R 408.17622 Rescinded.

R 408.17623 Rescinded.

R 408.17624 Rescinded.

R 408.17630 Rescinded.

R 408.17631 Rescinded.

R 408.17632 Rescinded.

R 408.17633 Rescinded.

R 408.17636 Rescinded.

R 408.17637 Rescinded.

R 408.17640 Rescinded.

R 408.17641 Rescinded.

R 408.17650 Rescinded.

R 408.17651 Rescinded.

R 408.17696 Rescinded.

R 408.17699 Rescinded.

PROPOSED ADMINISTRATIVE RULES, NOTICES OF PUBLIC HEARINGS

MCL 24.242(3) states in part:

"... the agency shall submit a copy of the notice of public hearing to the State Office of Administrative Hearings and Rules for publication in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall file a copy of the notice of public hearing with the State Office of Administrative Hearings and Rules."

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules."

PROPOSED ADMINISTRATIVE RULES

SOAHR 2004-054

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

AIR POLLUTION CONTROL

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

Draft May 22, 2007

(By authority conferred on the director of the department of environmental quality by sections 5503, 5505, and 5512 of 1994 PA 451, MCL 324.5503, 324.5505, and 324.5512, and Executive Reorganization Order No. 1995-18, MCL 324.99903)

R 336.2901, R 336.2901a, R 336.2902, R 336.2903, R 336.2907, R 336.2908, and R 336.2910 of the Michigan Administrative Code are added as follows:

PART 19. NEW SOURCE REVIEW FOR MAJOR SOURCES IMPACTING NONATTAINMENT AREAS

R 336.2901 Definitions.

Rule 1901. The following definitions apply to terms used in this part. If a term defined here is also defined elsewhere in these rules, then the definition contained here supersedes for this part only:

(a) "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined under R 336.1101(b), except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limit under R 336.2907. Instead, the terms "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

(b) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined by the following:

(i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. The following shall apply:

(A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(C) For a regulated new source review pollutant, when a project involves multiple emissions units, only 1 consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated new source review pollutant.

(D) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (i)(B) of this subdivision.

(ii) For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required under R 336.1201, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. All of the following shall apply:

(A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had the major stationary source been required to comply with the limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the United States environmental protection agency proposed or promulgated under 40 C.F.R. part 63, then the baseline actual emissions need only be adjusted if the department has taken credit for such emissions reductions in an attainment demonstration or maintenance plan. Title 40 C.F.R. part 63 is adopted by reference in R 336.2901a.

(D) For a regulated new source review pollutant, when a project involves multiple emissions units, only 1 consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated new source review pollutant.

(E) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subparagraphs (B) and (C) of this paragraph.

(iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a plantwide applicability limit for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units under paragraph (i) of this subdivision, for other existing emissions units under paragraph (ii) of this subdivision, and for a new emissions unit under paragraph (iii) of this subdivision.

(c) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of

permanent storage structures. "A change in method of operation" refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(d) "Best available control technology" or "BACT" means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. Application of best available control technology shall not result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 C.F.R. part 60 or 61, adopted by reference in R 336.2901a. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, then a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. The standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of the design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(e) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on 1 or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control, except the activities of any vessel. Pollutant-emitting activities are part of the same industrial grouping if they have the same 2-digit major group code associated with their primary activity. Major group codes and primary activities are described in the standard industrial classification manual, 1987. For assistance in converting north American industrial classification system codes to standard industrial classification codes see http://www.census.gov/epcd/naics02/.

(f) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(g) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "department of energy-clean coal technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the United States environmental protection agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(h) [Reserved]

(i) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and has either of the following:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time.

(ii) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(j) "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

(k) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule, to sample, condition, if applicable, analyze, and provide a record of emissions on a continuous basis.

(l) "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate, in terms of mass per unit of time.

(m) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this rule, to monitor process and control device operational parameters and other information, and to record average operational parameter values on a continuous basis.

(n) "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than 1/3 of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(o) "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant. The term emissions unit includes an electric steam generating unit. Each emissions unit can be classified as either new or existing based on the following:

(i) A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than 2 years from the date the emissions unit first operated.

(ii) An existing emissions unit is any emissions unit that does not meet the definition of a new emissions unit. A replacement unit is an existing emissions unit and no creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced. Replacement unit means all of the following:

(A) The emissions unit is a reconstructed unit as defined within R 336.1118(b) or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement does not alter the basic design parameters of the process unit.

(D) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(p) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

(q) "Hydrocarbon combustion flare" means either a flare used to comply with an applicable new source performance standard or maximum achievable control technology standard, including uses of flares during startup, shutdown, or malfunction permitted under such a standard, or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing not more than 230 milligrams per dry standard cubic meter hydrogen sulfide.

(r) "Lowest achievable emission rate" or "LAER" means, for any source, the more stringent rate of emissions based on either of the following:

(i) The most stringent emissions limitation that is contained in the implementation plan of any state for the same class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable.

(ii) The most stringent emissions limitation that is achieved in practice by the same class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. Application of the

term shall not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard.

(s) "Major modification" means the following:

(i) Any physical change in or change in the method of operation of a major stationary source that would result in both of the following:

(A) A significant emissions increase of a regulated new source review pollutant.

(B) A significant net emissions increase of that pollutant from the major stationary source.

(ii) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include any of the following:

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the energy supply and environmental coordination act of 1974, 15 U.S.C. §792 et seq., or any superseding legislation, or by reason of a natural gas curtailment plan under the federal power act of 1995, 16 U.S.C. §791-828c et seq.

(C) Use of an alternative fuel by reason of an order or rule under section 125 of the clean air act.

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a stationary source which meets either of the following:

(1) The source was capable of accommodating before December 21, 1976, unless the change would be prohibited under any federally enforceable permit condition that was established after December 12, 1976, under prevention of significant deterioration of air quality regulations or new source review for major sources in nonattainment areas regulations.

(2) The source is approved to use under any permit issued under R 336.1201(1)(a).

(F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition that was established after December 21, 1976, under R 336.1201(1)(a).

(G) Any change in ownership at a stationary source.

(H) [Reserved]

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with both of the following:

(1) The state implementation plan.

(2) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

(iv) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements of R 336.2907 for a plantwide applicability limit for that pollutant. Instead, the definition in R 336.2907(1)(h) shall apply.

(v) For the purposes of applying the requirements of R 336.2902(8) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title 1 of the clean air act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(vi) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major

stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title 1 of the clean air act.

(t) "Major stationary source" means all of the following:

(i) Any of the following:

(A) Any stationary source of air pollutants that emits or has the potential to emit 100 tons per year or more of any regulated new source review pollutant, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title 1 of the clean air act, according to the following:

(1) In any serious ozone nonattainment area, 50 tons per year of volatile organic compounds.

(2) In an area within an ozone transport region except for any severe or extreme ozone nonattainment area, 50 tons per year of volatile organic compounds.

(3) In any severe ozone nonattainment area, 25 tons per year of volatile organic compounds.

(4) In any extreme ozone nonattainment area, 10 tons per year of volatile organic compounds.

(5) In any serious nonattainment area for carbon monoxide, where the department has determined that stationary sources contribute significantly to carbon monoxide levels in the area, 50 tons per year of carbon monoxide.

(6) In any serious nonattainment area for PM-10, 70 tons per year of PM-10.

(B) For the purposes of applying the requirements of R 336.2902(8) to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxide emissions, except that the following emission thresholds shall apply in areas subject to subpart 2 of part D, title 1 of the clean air act:

(1) In any ozone nonattainment area classified as marginal or moderate, 100 tons per year or more of nitrogen oxides.

(2) In any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region, 100 tons per year or more of nitrogen oxides.

(3) In any area designated under section 107(d) of the clean air act as attainment or unclassifiable for ozone that is located in an ozone transport region, 100 tons per year or more of nitrogen oxides.

(4) In any serious nonattainment area for ozone, 50 tons per year or more of nitrogen oxides.

(5) In any severe nonattainment area for ozone, 25 tons per year or more of nitrogen oxides.

(6) In any extreme nonattainment area for ozone, 10 tons per year or more of nitrogen oxides.

(C) Any physical change that would occur at a stationary source not qualifying under R 336.2901(t)(i)(A) or (B) as a major stationary source, if the change would constitute a major stationary source by itself.

(ii) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to 1 of the following categories of stationary sources:

(A) Coal cleaning plants, with thermal dryers.

(B) Kraft pulp mills.

(C) Portland cement plants.

(D) Primary zinc smelters.

(E) Iron and steel mills.

(F) Primary aluminum ore reduction plants.

(G) Primary copper smelters.

(H) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(I) Hydrofluoric, sulfuric, or nitric acid plants.
(J) Petroleum refineries.
(K) Lime plants.
(L) Phosphate rock processing plants.
(M) Coke oven batteries.
(N) Sulfur recovery plants.
(O) Carbon black plants, furnace process.
(P) Primary lead smelters.
(Q) Fuel conversion plants.
(R) Sintering plants.
(S) Secondary metal production plants.
(T) Chemical process plants.
(U) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input.
(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
(W) Taconite ore processing plants.
(X) Glass fiber processing plants.
(Y) Charcoal production plants.
(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the clean air act.

(u) "Necessary preconstruction approvals or permits" means a permit issued under R 336.1201(1)(a) that is required by R 336.2802 or R 336.2902.

(v) "Net emissions increase" means all of the following:

(i) With respect to any regulated new source review pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(A) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated under R 336.2902(2).

(B) Any other increases and decreases in actual emissions at the major stationary source that occur within the contemporaneous period and are otherwise creditable.

(ii) The contemporaneous period must meet all of the following:

(A) Begins on the date 5 years before construction on the particular change commences.

(B) Ends on the date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit under R 336.1201(1)(a) or R 336.1214a, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) The magnitude of a creditable, contemporaneous increase in actual emissions is determined by the amount that the new level of actual emissions following the increase exceeds the emissions unit's baseline actual emissions prior to the increase. This means actual emissions and baseline actual emissions are determined from the date of the contemporaneous increase. Baseline actual emissions shall be determined as provided in the definition of baseline actual emissions, except that paragraphs (b)(i)(C) and (b)(ii)(D) of this subdivision shall not apply.

(v) A contemporaneous decrease in actual emissions is creditable only to the extent that all of the following occur:

(A) The magnitude of a creditable contemporaneous decrease is determined by the lower of the following:

(1) The amount by which the emission unit's baseline emissions prior to the decrease exceed the level of actual emissions following the decrease.

(2) The amount by which the emission unit's allowable emissions prior to the decrease exceed the level of actual emissions following the decrease.

(3) In determining the magnitude of a creditable contemporaneous decrease, actual emissions and baseline actual emissions are determined from the date of the contemporaneous decrease. Baseline actual emissions shall be determined as provided in the definition of baseline actual emissions except that paragraphs (b)(i)(C) and (b)(ii)(D) of this subdivision shall not apply.

(B) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.

(C) The department has not relied on it in issuing any permit under R 336.1201(1)(a) or R 336.1214a.

(D) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vi) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(vii) The definition of actual emissions in R 336.1101(b) shall not apply for determining creditable increases and decreases after a change, instead the definitions of the terms "projected actual emissions" and "baseline emissions" shall be used.

(w) "Nonattainment major new source review" or "NSR" program means the requirements of this rule, R 336.1220, or R 336.1221. A permit issued under any of these rules is a major new source review permit.

(x) [Reserved]

(y) [Reserved]

(z) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is legally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(aa) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters and other information and calculate and record the mass emissions rate on a continuous basis.

(bb) "Prevention of significant deterioration" or "PSD" permit means any permit that is issued under R 336.2802 or the prevention of significant deterioration of air quality regulations under 40 C.F.R. §52.21, adopted by reference in R 336.2901a.

(cc) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(dd) "Projected actual emissions" means the following:

(i) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any 1 of the 5 12-month periods following the date the unit resumes regular operation after the project, or in any 1 of the 10 12-month periods following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated new source review pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(ii) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source shall do the following:

(A) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved state implementation plan.

(B) Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(C) Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions of this rule and that are also unrelated to the particular project, including any increased utilization due to product demand growth.

(D) Elect to use the emissions unit's potential to emit in tons per year instead of calculating projected actual emissions.

(ee) "Regulated new source review pollutant" means any of the following:

(i) Nitrogen oxides or any volatile organic compounds.

(ii) Any pollutant for which a national ambient air quality standard has been promulgated.

(iii) Any pollutant that is a constituent or precursor of a general pollutant listed under paragraphs (i) or (ii) of this subdivision, provided that a constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant.

(ff) "Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or a vessel.

(gg) "Significant" means all of the following:

(i) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants at a rate of emissions that would equal or exceed any of the following pollutant emission rates:

(A) Carbon monoxide: 100 tons per year.

(B) Nitrogen oxides: 40 tons per year.

(C) Sulfur dioxide: 40 tons per year.

(D) Ozone: 40 tons per year of volatile organic compounds or of nitrogen oxides.

(E) Lead: 0.6 tons per year.

(F) PM-10: 15 tons per year of PM-10.

(ii) Notwithstanding the significant emissions rate for ozone in R 336.2901(gg)(i)(D), significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source located in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title 1 of the clean air act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(iii) For the purposes of applying the requirements of R 336.2902(8) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in

R 336.2901(gg)(i)(D), R 336.2901(gg)(ii) and R 336.2901(gg)(v) shall apply to nitrogen oxides emissions.

(iv) Notwithstanding the significant emissions rate for carbon monoxide in R 336.2901(gg)(i)(A), significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided that the United States environmental protection agency has determined that the stationary sources contribute significantly to carbon monoxide levels in that area.

(v) Notwithstanding the significant emissions rates for ozone in R 336.2901(gg)(i)(D) and R 336.2901(gg)(ii), any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title 1 of the clean air act shall be considered a significant net emissions increase.

(hh) "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant for that pollutant.

(ii) "Stationary source" means any building, structure, facility, or installation which emits or may emit a regulated new source review pollutant.

(jj) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

R 336.2901a Adoption by reference.

Rule 1901a. For the purpose of clarifying the definitions in these rules, the following documents are adopted by reference in these rules. Copies of the documents are available for inspection and purchase at the Air Quality Division, Department of Environmental Quality, 525 West Allegan Street, P.O. Box 30260, Lansing, Michigan 48909-7760, at a cost as of the time of adoption of these rules (AQD price). Copies of may be obtained from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania, 15250-7954, at a cost as of the time of adoption of these rules (GPO), or on the United States government printing office internet web site at http://www.access.gpo.gov.

(a) Title 40 C.F.R. 51.902(b), 40 C.F.R., part 51, appendix S, section IV, "Sources That Would Locate in a Designated Nonattainment Area," (2006), AQD price $55.00/GPO price $45.00.

(b) Title 40 C.F.R., §52.21, "Prevention of Significant Deterioration of Air Quality," (2006), AQD price $70.00/GPO price $60.00.

(c) Title 40 C.F.R., part 60, "Standards of Performance for New Stationary Sources," (2006), AQD price $68.00/GPO price $58.00 for 60.1-end and AQD price $67.00/GPO price $57.00 for the appendices.

(d) Title 40 C.F.R., part 61, "National Emission Standards for Hazardous Air Pollutants," (2006), AQD price $55.00/GPO price $45.00.

(e) Title 40 C.F.R., part 63, "National Emission Standards for Hazardous Air Pollutants for Source Categories," (2006), AQD $68.00/GPO $58.00 for 63.1-63.599; AQD $60.00/GPO $50.00 for 63.600-63.1199; AQD $60.00/GPO $50.00 for 63.1200-63.1439; AQD $42.00/GPO $32.00 for 63.1440-63.6175; AQD $42.00/GPO $32.00 for 63.6580-63.8830; and AQD $45.00/GPO $35.00 for 63.8980-end.

(f) Table 1 of the United States environmental protection agency's "Recommended Policy on Control of Volatile Organic Compounds," 42 FR 35314, July 8, 1977, at no cost. Copies of table 1 may

be obtained from the Library of Michigan, State Law Library, 525 West Ottawa Street, P.O. Box 30007, Lansing, Michigan 48909, E-mail lmlawlib@michigan.gov, at no cost.

R 336.2902 Applicability.

Rule 1902. (1) This part applies to the construction of each new major stationary source or major modification that is both of the following:

(a) Located in a nonattainment area.

(b) Major for the pollutant for which the area is designated nonattainment.

For areas designated as nonattainment for ozone, this part shall apply only to any new major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides.

(2) This part applies to the construction of new major sources and major modifications to existing sources as follows:

(a) Except as otherwise provided in subrule (3) of this rule, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes both of the following emissions increases:

(i) A significant emissions increase.

(ii) A significant net emissions increase.

The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(c) The actual-to-projected-actual applicability test may be used for projects that only involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(d) The actual-to-potential test may be used for projects that involve construction of new emissions units or modification of existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new and modified emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(e) The hybrid test may be used for projects that involve multiple types of emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the appropriate methods specified above in this subrule as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(3) Any major stationary source for a plantwide applicability limit for a regulated new source review pollutant shall comply with R 336.2907.

(4) The provisions of this rule do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions to the extent quantifiable are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants, with thermal dryers.

(b) Kraft pulp mills.

(c) Portland cement plants.
(d) Primary zinc smelters.
(e) Iron and steel mills.
(f) Primary aluminum ore reduction plants.
(g) Primary copper smelters.
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day.
(i) Hydrofluoric, sulfuric, or citric acid plants.
(j) Petroleum refineries.
(k) Lime plants.
(l) Phosphate rock processing plants.
(m) Coke oven batteries.
(n) Sulfur recovery plants.
(o) Carbon black plants, furnace process.
(p) Primary lead smelters.
(q) Fuel conversion plants.
(r) Sintering plants.
(s) Secondary metal production plants.
(t) Chemical process plants.
(u) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input.
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
(w) Taconite ore processing plants.
(x) Glass fiber processing plants.
(y) Charcoal production plants.
(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
(aa) Any other stationary source category which, as of August 7, 1980, is regulated under section 111 or 112 of the clean air act.

(5) The following additional construction and permitting requirements apply:

(a) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with any other applicable requirements and any other requirements under local, state, or federal law.

(b) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of R 336.2908 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(6) The following provisions apply to projects at existing emissions units at a major stationary source that is subject to either prevention of significant deterioration of air quality regulations or new source review for major sources in nonattainment areas regulations in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method in R 336.2901(dd) or R 336.2801(ll) for calculating projected actual emissions:

(a) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project.

(ii) Identification of the emissions units whose emissions of a regulated new source review pollutant may be affected by the project.

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under R 336.2901(dd)(ii)(C) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information required by subdivision (a) of this subrule to the department. This subdivision does not require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(c) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified under subdivision (a)(ii) of this subrule and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at the emissions unit.

(d) If the unit is an existing electric utility steam generating unit, then the owner or operator shall submit a report to the department within 60 days after the end of each year during which records shall be generated under subdivision (c) of this subrule setting out the unit's annual emissions during the year that preceded submission of the report.

(e) If the unit is an existing unit other than an electric utility steam generating unit, then the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified pursuant to this subrule, exceed the baseline actual emissions by a significant amount for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection. The report shall be submitted to the department within 60 days after the end of such year. The report shall contain all of the following information:

(i) The name, address and telephone number of the major stationary source.

(ii) The annual emissions as calculated under subdivision (c) of this subrule.

(iii) Any other information that the owner or operator wishes to include in the report, for example, an explanation as to why the emissions differ from the preconstruction projection.

(f) A reasonable possibility that a project may result in a significant emissions increase occurs when the project is subject to R 336.1201(1)(a) and is not exempted from the requirement to obtain a permit to install by R 336.1278 to R 336.1290. If the owner or operator determines that the project is exempted by R 336.1278 to R 336.1290, then the owner or operator may proceed with the project without obtaining a permit to install. If an owner or operator develops calculations for the project pursuant to R 336.2901(dd) or R 336.2801(ll), the calculations may be used for the purpose of demonstrating compliance with R 336.1278a(1)(c).

(7) The owner or operator of the source shall make the information required to be documented and maintained under this rule available for review upon a request for inspection by the department, or the general public under section 5516(2) of the act, MCL 324.5516(2).

(8) The requirements of this part that apply to major stationary sources and major modifications of volatile organic compounds shall also apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or portions of an ozone transport region where the United States environmental protection agency has granted a NOx waiver applying the standards set forth under section 182(f) of the clean air act and the waiver continues to apply.

R 336.2903 Additional permit requirements for sources impacting nonattainment areas.

Rule 1903. (1) No new major stationary source or major modification shall be constructed in an area designated as attainment or unclassifiable for any national ambient air quality standard under section 107 of the clean air act, without first applying for a permit to install under R 336.1201(1)(a). The department shall not approve any permit to install that would cause or contribute to a violation of any national ambient air quality standard.

(2) A major source or major modification shall be considered to cause or contribute to a violation of a national ambient air quality standard when the source or modification would, at a minimum, exceed the following significance levels in Table 191 at any locality that does not or would not meet the applicable national standard:

Table 191

	Averaging time (hours)				
Pollutant	Annual	24	8	3	1
Sulfur dioxide	1.0 ug/m^3	5 ug/m^3		25 ug/m^3	
PM-10	1.0 ug/m^3	5 ug/m^3			
Nitrogen dioxide	1.0 ug/m^3				
Carbon Monoxide			500 ug/m^3		2000 ug/m^3

(3) The owner of a major stationary source or major modification subject to this rule may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, the department shall deny the proposed construction.

(4) This rule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in a nonattainment area.

R 336.2907 Actuals plantwide applicability limits or PALs.

Rule 1907. (1) The following definitions apply to the use of actuals PALs. If a term is not defined in these paragraphs, then it shall have the meaning given in R 336.2901:

(a) "Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(b) "Allowable emissions" means allowable emissions as defined in R 336.1101(k), except this definition is modified in the following manner:

(i) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(ii) An emissions unit's potential to emit shall be determined using the definition in R 336.2901(z), except that the words "or enforceable as a practical matter" shall be added after "legally enforceable."

(c) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

(d) "Major emissions unit" means either of the following:

(i) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area.

(ii) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the clean air act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the clean air act, an emissions unit is a major emissions unit for volatile organic

compounds if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of volatile organic compounds per year.

(e) "Plantwide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source that is enforceable as a practical matter and established source-wide in accordance with this rule.

(f) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(g) "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

(h) "PAL major modification" means, notwithstanding R 336.2901(s) and (v), the definitions for major modification and net emissions increase, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(i) "PAL permit" means the permit to install that establishes a PAL for a major stationary source.

(j) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(k) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

(2) The following requirements pertain to applicability:

(a) The department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of this rule. "PAL" means "actuals PAL" in this rule.

(b) The department shall not allow an actuals PAL for volatile organic compounds or nitrogen oxides for any major stationary source located in an extreme ozone nonattainment area.

(c) For physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this rule, and complies with the PAL permit, all of the following shall apply:

(i) Is not a major modification for the PAL pollutant.

(ii) Does not have to be approved through the permitting requirements of this rule.

(iii) Is not subject to the provisions in R 336.2902(5)(b), restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major new source review program.

(d) Except as provided under subdivision (c)(iii) of this subrule, a major stationary source shall continue to comply with all applicable federal, state, or local requirements, emission limitations, and work practice requirements that were established before the effective date of the PAL.

(3) As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit all of the following information to the department for approval:

(a) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal, state, or local applicable requirements, emission limitations, or work practices apply to each unit.

(b) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions shall include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subrule (13)(a) of this rule.

(4) The following general requirements apply for establishing PALs:

(a) The department may establish a PAL at a major stationary source, provided that, at a minimum, all the following requirements are met:

(i) The PAL shall impose an annual emission limitation in tons per year, which is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month total, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(ii) The PAL shall be established in a permit to install that meets the public participation requirements in subrule (5) of this rule.

(iii) The PAL permit to install shall contain all the requirements of subrule (7) of this rule.

(iv) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(v) Each PAL shall regulate emissions of only 1 pollutant.

(vi) Each PAL shall have a PAL effective period of 10 years.

(vii) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subrules (12) to (14) of this rule for each emissions unit under the PAL through the PAL effective period.

(b) At no time, during or after the PAL effective period, are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under R 336.2908(5) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) PALs for existing major stationary sources shall be established, renewed, or increased through a permit to install issued under R 336.1201(1)(a). The department shall provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department shall address all material comments before taking final action on the permit.

(6) The following apply to setting the 10-year actuals PAL level.

(a) Except as provided in subdivision (b) of this subrule, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant. When establishing the actuals PAL level, for a PAL pollutant, only 1 consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period shall be subtracted from the PAL level. The department shall specify a reduced PAL level, in tons per year, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirements before issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 parts per million nitrogen oxides to a new rule limit of 30 parts per million, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit.

(b) For newly constructed units, which do not include modifications to existing units, on which actual construction began after the 24-month period, instead of adding the baseline actual emissions as specified in subdivision (a) of this subrule, the emissions shall be added to the PAL level in an amount equal to the potential to emit of the units.

(7) The PAL permit shall contain, at a minimum, all of the following information:

(a) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(b) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subrule (10) of this rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. The PAL shall remain in effect until a revised PAL permit is issued by the department.

(d) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions.

(e) A requirement that, once the PAL expires, the major stationary source is subject to subrule (9) of this rule.

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subrule (13)(a) of this rule.

(g) A requirement that the major stationary source owner or operator monitor all emissions units under subrule (12) of this rule.

(h) A requirement to retain on-site the records required under subrule (13) of this rule. The records may be retained in an electronic format.

(i) A requirement to submit the reports required under subrule (14) of this rule by the required deadlines.

(j) Any other requirements that the department determines necessary to implement and enforce the PAL.

(8) The following shall apply to the PAL effective period and reopening of the PAL permit:

(a) The department shall specify a PAL effective period of 10 years.

(b) The following shall apply to reopening of the PAL permit:

(i) During the PAL effective period, the department shall reopen the PAL permit to do any of the following:

(A) Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(B) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under R 336.2908(5)(b) through (h).

(C) Revise the PAL to reflect an increase in the PAL as provided under subrule (11) of this rule.

(ii) The department may reopen the PAL permit for any of the following:

(A) Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date.

(B) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under the state implementation plan.

(C) Reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a national ambient air quality standard or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(iii) Except for a permit reopening for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subrule (5) of this rule.

(9) Any PAL, which is not renewed in accordance with the procedures in subrule (10) of this rule, shall expire at the end of the PAL effective period, and the following requirements of this paragraph shall apply:

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(i) Within the time frame specified for PAL renewals in subrule (10)(b) of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit, or each group of emissions units, if such a distribution is more appropriate as determined by the department, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subrule (10)(e) of this rule, then the distribution shall be made as if the PAL had been adjusted.

(ii) The department shall determine whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(b) Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(c) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(d) Any physical change or change in the method of operation at the major stationary source shall be subject to the nonattainment major new source review requirements if the change meets the definition of major modification in R 336.2901(s).

(e) The major stationary source owner or operator shall continue to comply with all state, federal, or local applicable requirements that may have applied either during the PAL effective period or before the PAL effective period, except for those emission limitations that were eliminated by the PAL under subrule (2)(c)(iii) of this rule.

(10) The following shall apply to renewal of a PAL:

(a) The department shall follow the procedures specified in subrule (5) of this rule in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months before, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain all of the following information:

(i) The information required in subrule (3) of this rule.

(ii) A proposed PAL level.

(iii) The sum of the potential to emit of all emissions units under the PAL with supporting documentation.

(iv) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider either of the options outlined in paragraphs (i) and (ii) of this subdivision. The adjustment shall comply with paragraph (iii) of this subdivision.

(i) If the emissions level calculated in accordance with subrule (6) of this rule is equal to or greater than 80% of the PAL level, the department may renew the PAL at the same level without considering the factors in paragraph (ii) of this subdivision.

(ii) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(iii) Notwithstanding paragraphs (i) and (ii) of this subdivision, both of the following shall apply:

(A) If the potential to emit of the major stationary source is less than the PAL, then the department shall adjust the PAL to a level not greater than the potential to emit of the source.

(B) The department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with subrule (11) of this rule.

(e) If the compliance date for a state, federal, or local requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, then the PAL shall be adjusted at the time of PAL permit renewal or renewable operating permit renewal, whichever occurs first.

(11) The following shall apply to increasing a PAL during the PAL effective period:

(a) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions:

(i) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(ii) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

(iii) The owner or operator obtains a major new source review permit for all emissions units identified in paragraph (i) of this subdivision, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the nonattainment major new source review program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

(iv) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in subdivision (a)(ii) of this subrule, plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit shall be revised to reflect the increased PAL level under the public notice requirements of subrule (5) of this rule.

(12) The following shall apply to monitoring requirements for PALs:

(a) The following general requirements shall apply:

(i) Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by the system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(ii) The PAL monitoring system shall employ 1 or more of the 4 general monitoring approaches meeting the minimum requirements set forth in subdivision (b) of this subrule and shall be approved by the department.

(iii) Notwithstanding paragraph (ii) of this subdivision, an owner or operator may also employ an alternative monitoring approach that meets paragraph (i) of this subdivision if approved by the department.

(iv) Failure to use a monitoring system that meets the requirements of this rule renders the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions (c) to (i) of this subrule:

(i) Mass balance calculations for activities using coatings or solvents.

(ii) CEMS.

(iii) CPMS or PEMS.

(iv) Emission factors.

(c) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet all of the following requirements:

(i) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.

(ii) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process.

(iii) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, then the owner or operator shall use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL pollutant emissions shall meet both of the following requirements:

(i) CEMS shall comply with applicable performance specifications found in 40 C.F.R. part 60, appendix B, adopted by reference in R 336.2901a.

(ii) CEMS shall sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet both of the following requirements:

(i) The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.

(ii) Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet all of the following requirements:

(i) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(ii) The emissions unit shall operate within the designated range of use for the emission factor, if applicable.

(iii) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not required.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) Notwithstanding the requirements in subdivision (c) to (g) of this subrule, if an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, then the department shall, at the time of permit issuance do either of the following:

(i) Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points.

(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the department. Testing shall occur at least once every 5 years after issuance of the PAL.

(13) All of the following recordkeeping requirements shall apply:

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with this rule and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of all of the following records for the duration of the PAL effective period plus 5 years:

(i) A copy of the PAL permit application and any applications for revisions to the PAL.

(ii) Each annual certification of compliance pursuant to renewable operating permit and the data relied on in certifying the compliance.

(14) The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the department in accordance with the source’s renewable operating permit. The reports shall meet all of the following requirements:

(a) The semiannual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain all of the following information:

(i) The identification of owner and operator and the permit number.

(ii) Total annual emissions, tons per year, based on a 12-month rolling total for each month in the reporting period recorded under subrule (13)(a) of this rule.

(iii) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(iv) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(v) The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action taken.

(vi) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully

operational or replaced with another monitoring system, whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subrule (12)(g) of this rule.

(vii) A signed statement by the responsible official, as defined by the applicable renewable operating permit, certifying the truth, accuracy, and completeness of the information provided in the report.

(b) The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under R 336.1213(3)(c)(i) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the source's renewable operating permit. The reports shall contain all of the following information:

(i) The identification of owner and operator and the permit number.

(ii) The PAL requirement that experienced the deviation or that was exceeded.

(iii) Emissions resulting from the deviation or the exceedance.

(iv) A signed statement by the responsible official, as defined by the source's renewable operating permit, certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The owner or operator shall submit to the department the results of any re-validation test or method within 3 months after completion of the test or method.

R 336.2908 Conditions for approval of a major new source review permit in a nonattainment area.

Rule 1908. (1) The department may only issue a permit approving the construction of a new major stationary source or major modification in a nonattainment area if the department has determined that the owner or operator of the major stationary source or major modification will comply with all of the provisions of this rule.

(2) The owner or operator of the proposed major stationary source or major modification shall provide an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed major stationary source or major modification which demonstrates that the benefits of the proposed major stationary source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(3) The major stationary source or major modification shall comply with the lowest achievable emissions rate for each regulated new source review pollutant for which the area is designated as nonattainment.

(4) All stationary sources which have a potential to emit 100 or more tons per year of any air contaminant regulated under the clean air act, which are located in the state, and which are owned or controlled by the owner, operator, or an entity controlling, controlled by, or under common control with, the owner or operator of the proposed major stationary source or major modification shall be in compliance with all applicable local, state, and federal air quality regulations or shall be in compliance with a legally enforceable permit condition or order of the department specifying a plan and timetable for compliance.

(5) Before the start-up of the new major stationary source or major modification, an emission reduction offset for each major nonattainment air contaminant shall be provided consistent with the following provisions:

(a) The baseline for determining credit for emissions reductions is the emissions limit under the state implementation plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where either of the following occurs:

(i) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the nonattainment area.

(ii) The state implementation plan does not contain an emissions limitation for that source or source category.

(b) The following requirements apply to emissions offset credits:

(i) Where the allowable emissions are greater emissions than the potential to emit of the source, emissions offset credit shall be allowed only for control below this potential.

(ii) For an existing fuel combustion source, credit shall be based on the source's allowable emissions for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, then emissions offset credit based on the allowable, or actual, emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department shall ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

(c) An emission reduction credit shall not be creditable as an emission offset unless it meets the following requirements:

(i) Emissions reductions that have been achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets only if they meet all of the following requirements:

(A) The reductions are surplus, permanent, quantifiable and federally enforceable.

(B) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. The department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes emissions from such previously shutdown or curtailed emission units. However, credit shall not be given for shutdowns that occurred before August 7, 1977.

(ii) Emissions reductions that are achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements of R 336.2908(5)(c)(i)(B) may be generally credited only if they meet either of the following:

(A) The shutdown or curtailment occurred on or after the date the construction permit application is filed.

(B) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions are surplus, permanent, quantifiable and federally enforceable.

(d) Emissions credit shall not be allowed for replacing 1 hydrocarbon compound with another of lesser reactivity, except for those compounds listed in table 1 of the United States environmental protection agency's "Recommended Policy on Control of Volatile Organic Compounds," 42 FR 35314, July 8, 1977, adopted by reference in R 336.2901a.

(e) All emission reductions claimed as offset credit shall be federally enforceable.

(f) Offsets shall be obtained from the same nonattainment area as the proposed major source or major modification, except another nonattainment area may be used if both of the following conditions are met:

(i) The other area has an equal or higher nonattainment classification than the area in which the proposed source is located.

(ii) Nonattainment air contaminant emissions from the other area contribute to a violation of a national ambient air quality standard in the nonattainment area in which the proposed major source or major modification would be located.

(g) Credit for an emissions reduction may be claimed to the extent that the reviewing authority has not relied on it in issuing any permit required by R 336.1220 or R 336.2902 and the department has not relied on it in demonstrating attainment or reasonable further progress.

(h) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit. Unless specified otherwise in this rule, the offset ratio for each nonattainment air pollutant that will be emitted in significant amounts from a new major source or major modification located in a nonattainment area that is subject to subpart 1, part D, title 1of the clean air act shall be 1:1.

(i) The provisions of this subrule do not apply to emissions resulting from proposed major sources or major modifications to the extent that the emissions are temporary and will not prevent reasonable further progress towards attainment of any applicable standard. Examples of temporary emissions include emissions from all of the following:

(i) Pilot plants.

(ii) Portable facilities which will be relocated outside the nonattainment area within 18 months.

(iii) The construction phase of a new major stationary source or major modification.

(6) For facilities meeting the emissions offset requirements of R 336.2908(5) for ozone nonattainment areas that are subject to subpart 2, part D, title 1 of the clean air act, the facility must meet the following requirements:

(a) The ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(i) In any marginal nonattainment area for ozone, the ratio shall be 1.1:1.

(ii) In any moderate nonattainment area for ozone, the ratio shall be 1.15:1.

(iii) In any serious nonattainment area for ozone, the ratio shall be 1.2:1.

(iv) In any severe nonattainment area for ozone, the ratio shall be 1.3:1, except that the ratio may be 1.2:1 if all existing major sources in the severe nonattainment area use BACT for the control of VOC.

(v) In any extreme nonattainment area for ozone, the ratio shall be 1.5:1, except that the ratio may be 1.2:1 if all existing major sources in the extreme nonattainment area use BACT for the control of VOC.

(b) Not withstanding the requirements of R 336.2908(6)(a) for meeting the requirements of R 336.2908(5), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D, title 1 of the clean air act except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title 1 of the clean air act.

(c) For each facility meeting the emissions offset requirements of R 336.2908(5) for ozone nonattainment areas that are subject to subpart 1, part D, title 1 of the clean air act but are not subject to subpart 2, part D, title 1 of the clean air act, including 8-hour ozone nonattainment areas subject to 40 C.F.R. 51.902(b), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1:1. Title 40 C.F.R. 51.902(b) is adopted by reference in R 336.2901a.

(7) The requirements of this section that apply to major stationary sources and major modifications of PM-10 shall also apply to major stationary sources and major modifications of PM-10 precursors, except when the department determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

R 336.2910 Administrative hearings.

Rule 1910. A person aggrieved by an action or inaction of the department under prevention of significant deterioration of air quality regulations or new source review for major sources in nonattainment areas regulations may request a formal hearing, under 1969 PA 306, MCL 24.201. The following apply:

(a) The request shall be received by the department within 30 days after the person received notice of the decision to approve or deny the permit.

(b) The final decision in granting a contested case hearing lies with the department. To receive a contested case hearing, a person shall demonstrate 1 of the following:

(i) The person is the permit applicant.

(ii) The person participated in the permit review process, either by submitting written comments during the 30-day public notice period or by attending the public hearing and making comments for the official record, and the comments were not adequately addressed by the department in the permit review process.

(iii) The terms or conditions of the permit for which the person requests a hearing were added by the department after the 30-day notice period expired, and no additional opportunity for public input was offered by the department.

(c) When the department issues a permit pursuant to the requirements of the prevention of significant deterioration of air quality regulations or new source review for major sources in nonattainment areas regulations, the permit is valid upon issuance and it is not automatically stayed if a person requests a formal hearing pursuant to this rule. A permittee may immediately initiate construction after permit issuance. However, the permittee faces the risk that a subsequent hearing may alter the terms or conditions of the permit.

NOTICE OF PUBLIC HEARING

SOAHR 2004-054
NOTICE OF PUBLIC HEARING
DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

The Michigan Department of Environmental Quality (DEQ), Air Quality Division, will conduct a second public hearing on proposed administrative rules promulgated pursuant to Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451); R 336.2901, R 336.2901a, R 336.2902, R 336.2903, R 336.2907, R 336.2908, and R 336.2910. The second public hearing is to address the revisions to the definitions of "replacement unit" and "net emissions increase." This rulemaking will add Part 19, New Source Review for Major Sources Impacting Nonattainment Areas. The proposed rules are necessary to implement a complete, modern New Source Review program that meets federal requirements for permitting major sources in nonattainment areas.

The public hearing will be held on July 19, 2007, at 10:00 a.m., in the Brake Conference Room, Constitution Hall, Atrium South, 525 West Allegan Street, Lansing, Michigan.

Copies of the proposed rules (SOAHR 2004-054EQ) can be downloaded from the Internet at: http://www.michigan.gov/deqair. These rules can also be downloaded from the Internet through the State Office of Administrative Hearings and Rules at http://www.michigan.gov/orr. Copies of the rules may also be obtained by contacting the Lansing office at:

Air Quality Division
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48909-7760
Phone: 517-373-7045
Fax: 517-241-7499
E-Mail: halbeism@Michigan.gov

All interested persons are invited to attend and present their views. It is requested that all statements be submitted in writing for the hearing record. Anyone unable to attend may submit comments in writing to the address above. Written comments must be received by 5:00 p.m. on July 19, 2007.

Persons needing accommodations for effective participation in the meeting should contact the Air Quality Division at 517-373-7045 one week in advance to request mobility, visual, hearing, or other assistance.

This notice of public hearing is given in accordance with Sections 41 and 42 of Michigan's Administrative Procedures Act, 1969 PA 306, as amended, being Sections 24.241 and 24.242 of the Michigan Compiled Laws. Administration of the rules is by authority conferred on the Director of the DEQ by Sections 5503 and 5512 of Act 451, being Sections 324.5503 and 324.5512 of the Michigan Compiled Laws, and Executive Order 1995-18. These rules will become effective immediately after filing with the Secretary of State.

PROPOSED ADMINISTRATIVE RULES

SOAHR 2005-036

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

AIR POLLUTION CONTROL

Filed with the Secretary of State on

This rule becomes effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of environmental quality by sections 5503 and 5512 of 1994 PA 451, MCL 324.5503 and 324.5512, and Executive Reorganization Order No. 1995-18, MCL 324.99903)

Draft May 10, 2007

R 336.1401, R 336.1402, and R 336.1404 of the Michigan Administrative Code are amended, and R 336.1401a, R 336.1405, R 336.1406, R 336.1407, and R 336.1420 are added to the Code as follows:

PART 4. EMISSION LIMITATIONS AND PROHIBITIONS – SULFUR-BEARING COMPOUNDS

R 336.1401 Emission of sulfur dioxide from power plants.

Rule 401. (1) In a power plant, it is unlawful for a person to burn fuel that does not comply with the sulfur content limitation of table 41 or which, when burned, results in sulfur dioxide emissions exceeding an equivalent emission rate as shown in table **41.** ~~42, unless all of the following conditions are met:~~ **In a power plant located in Wayne county, it is unlawful for a person to burn fuel that does not comply with the sulfur content limitation of table 42 and unlawful to cause or permit a discharge into the atmosphere from fuel-burning equipment sulfur dioxide in excess of the sulfur dioxide concentration limit shown in table 42.** ~~(a) The source of fuel burning is not subject to federal emission standards for new stationary sources.~~

~~(b) An installation permit, if required by part 2, was approved by the department before August 17, 1971.~~

~~(c) The user furnishes evidence that the fuel burning does not create, or contribute to, an ambient level of sulfur dioxide in excess of the applicable ambient air quality standards. The evidence shall consist of air quality data or stack dispersion calculations, or both, satisfactory to the department.~~

~~(d) The user is operating in compliance with a voluntary agreement, order, stipulation, or variance from the department.~~

~~(2) Notwithstanding the provisions of subrule (1) of this rule, an exception from the limitations of table 41 shall not be permitted after January 1, 1980, unless specific authorization is granted by the department.~~

~~(3) A person responsible for operation of a source that, on the effective date of the 1973 amendment to this rule or for any anticipated time in the future, is or will be using fuel with a sulfur content in excess of that allowed to be burned on July 1, 1978, as listed in table 41, or which, on such effective date or any anticipated time in the future, is or will be emitting sulfur dioxide in excess of the equivalent emission for that fuel, as shown in table 42, shall submit to the department a written program for compliance with this rule within 60 days after such effective date. This requirement does not apply to a source for which the department has approved an exception to table 41 under the provisions of subrule (1) of this rule.~~

~~(4) The program required by subrule (3) of this rule shall include the method by which compliance shall be achieved, a complete description of new equipment to be installed or modifications to existing equipment to be made, and a timetable which specifies, at a minimum, all of the following dates:~~

~~(a) The date equipment shall be ordered.~~

~~(b) The date construction or modification of equipment shall begin.~~

~~(c) The date initial startup of equipment shall begin.~~

~~(d) The date emissions shall be reduced to levels shown in tables 41 and 42.~~

~~(5) The department may allow any source that is required to submit a compliance program under subrule (3) of this rule an extension to the programmed compliance date, if all of the following conditions are met:~~

~~(a) The source of fuel burning is not subject to federal emission standards for new stationary sources.~~

~~(b) An installation permit, if required by part 2, was approved by the department before August 17, 1971.~~

~~(c) The user furnishes satisfactory evidence to the department that the fuel burning does not create or contribute to an ambient level of sulfur dioxide in excess of the applicable ambient air quality standards.~~

~~(6) A person shall not cause or permit the burning of fuel in any fuel-burning equipment that results in an average emission of sulfur dioxide for any calendar month at a rate greater than was emitted by that fuel-burning equipment for the corresponding calendar month of the year 1970, unless otherwise authorized by the department.~~

~~(7) The use of fuels having sulfur contents as set forth in this rule shall not allow degradation in the mass rate of particulate emission, unless otherwise authorized by the department. The department may require source emission tests which may be performed by, or under the supervision of, the department at the expense of the owners and may require the submission of reports to the department both before and after changes are made in the sulfur content in fuel.~~

~~(8)~~**(2)** Tables 41 and 42 read as follows:

~~TABLE 41~~

~~Sulfur in fuel limitations for fuel-burning equipment~~

~~Plant capacity[a] 1000 lbs. Steam per hour~~	~~Maximum sulfur content in fuel[b] Percent by weight~~	
	~~July 1,1975~~	~~July 1, 1978~~
~~0-500~~	~~2.0~~	~~1.5~~
~~Over 500~~	~~1.5~~	~~1.0~~

TABLE 41

Fuel and sulfur dioxide emission limitations for fuel burning equipment

Plant Capacity[a]	Maximum average sulfur content in fuel[b] Percent by weight	Equivalent emission rates			
		Parts per million by volume (ppmv) corrected to 50% excess air		Pounds of sulfur dioxide per million Btu of heat input	
		Solid fuel[c] (12,000 Btu/lb)	Liquid fuel[d] (18,000 Btu/lb)	Solid fuel[c] (12,000 Btu/lb)	Liquid fuel[d] (18,000 Btu/lb)
0-500,000 lbs steam per hour plant capacity	1.5	890	630	2.5	1.67
Greater than 500,000 lbs steam per hour plant capacity	1.0	590	420	1.67	1.11

(a) The total steam production capacity of all coal- and oil-burning equipment in a power plant as of August 17, 1971.

(b) "Maximum average sulfur content in fuel" means the average sulfur content in all fuels burned at any 1 time in a power plant. The sulfur content shall be calculated on the basis of 12,000 Btu per pound for solid fuels and 18,000 Btu per pound for liquid fuels. The determination of sulfur content (percent by weight) of fuel shall be carried out in accordance with a procedure acceptable to the department.

(c) Solid fuels include both pulverized coal and all other coal.

(d) Liquid fuels include distillate oil (No. 1 and No. 2), heavy oil (No. 4, No. 5, and No. 6), and crude oil.

~~TABLE 42~~

~~Equivalent emission rates~~

~~% Sulfur in fuels[c]~~	~~Parts per million by volume corrected to 50% excess air~~		~~Pounds of sulfur dioxide per million Btu of heat input~~	
	~~Solid fuel[d] (12,000 Btu/lb)~~	~~Liquid fuel[e] (18,000 Btu/lb)~~	~~Solid fuel[d] (12,000 Btu/lb)~~	~~Liquid fuel[e] (18,000 Btu/lb)~~
~~1.0~~	~~590~~	~~420~~	~~1.67~~	~~1.11~~
~~1.5~~	~~890~~	~~630~~	~~2.50~~	~~1.67~~
~~2.0~~	~~1,180~~	~~840~~	~~3.33~~	~~2.22~~

~~(a) For the purpose of this rule, "plant capacity" is defined as the total steam production capacity of all coal- and oil-burning equipment in a power plant as of August 17, 1971. A "power plant" is defined as a single structure devoted to steam or electric generation, or both, and may contain multiple boilers.~~

~~(b) "Maximum sulfur content in fuel" is defined as the average sulfur content in all fuels burned at any one time in a power plant. The sulfur content shall be calculated on the basis of 12,000 Btu per pound for solid fuels and 18,000 Btu per pound for liquid fuels.~~

~~(c) The determination of sulfur content (percent by weight) of fuel shall be carried out in accordance with a procedure acceptable to the department.~~

~~(d) Solid fuels include both pulverized coal and all other coal.~~
~~(e) Liquid fuels include distillate oil (No. 1 and No. 2), heavy oil (No. 4, No. 5, and No. 6), and crude oil.~~

TABLE 42
Fuel and sulfur dioxide concentration limitations for fuel burning equipment located in Wayne county

Fuel type	Maximum weight percent sulfur content in fuel[(a)] limitations for fuel-burning equipment	SO_2 ppmv emission rates corrected to 50% excess air
Pulverized coal	1.00	550
Other coal	0.75	420
Distillate oil Nos. 1 & 2	0.30	120
Crude and heavy oil Nos. 4, 5, & 6	1.00	400
(a) The determination of sulfur content (percent by weight) of fuel shall be carried out in accordance with a procedure acceptable to the department.		

(3) The use of fuels having sulfur contents as set forth in table 41 and table 42 shall not allow degradation in the mass rate of particulate emissions, unless otherwise authorized by the department. The department may require source emission tests which may be performed by, or under the supervision of, the department at the expense of the owners and may require the submission of reports to the department both before and after changes are made in the sulfur content in fuel.

(4) The following provisions apply to persons in Wayne county:

(a) The maximum weight percent sulfur content in fuel limitations for fuel-burning equipment provisions of table 42 of this rule shall not apply to any person who uses a combination of fuels in such ratios as to meet the sulfur dioxide concentration limitations specified in table 42 and has obtained written approval from the department for this exemption. The allowable concentration limit will be based on the value in the table for the fuel having the higher allowable concentration limit.

(b) The maximum weight percent sulfur content in fuel limitations for fuel-burning equipment provisions of table 42 of this rule shall not apply to any person who has received an installation permit from the department on a control device to desulfurize the stack gases and the control device is installed and operating properly.

R 336.1401a Definitions.

Rule 401a. As used in this part:

(a) "Power plant" means a single structure devoted to steam or electric generation, or both, and may contain multiple boilers.

(b) "Sulfur recovery plant" means any plant that recovers elemental sulfur from any gas stream.

R 336.1402 Emission of sulfur dioxide from fuel-burning sources other than power plants.

Rule 402. (1) ~~Except as provided in rule 401 and subrule (2),~~ **At a fuel burning source other than a power plant** ~~after January 1, 1981,~~ it is unlawful for a person to cause or allow the emission of sulfur

dioxide from the combustion of any coal or oil fuel in excess of 1.7 pounds per million ~~Btu's~~ **Btu** of heat input for oil fuel or in excess of 2.4 pounds per million ~~Btu's~~ **Btu** of heat input for coal fuel.

(2) The provisions of ~~this rule~~ **subrule (1) of this rule** do not apply to a fuel-burning source that is unable to comply with the specified emission limits because of sulfur dioxide emissions caused by the presence of sulfur in other raw materials charged to the fuel-burning source. This exception shall apply if at any time the actual sulfur dioxide emission rate exceeds the expected theoretical sulfur dioxide emission rate from fuel burning. The expected theoretical sulfur dioxide emission rate shall be based on the quantity of fuel burned and the average sulfur content of the fuel.

(3) At a fuel burning source located in Wayne county other than a power plant, it is unlawful for a person to burn fuel that does not comply with the sulfur content limitation of table 43 and unlawful to cause or allow a discharge into the atmosphere from fuel burning equipment sulfur dioxide in excess of the sulfur dioxide concentration limit shown in table 43.

(4) Table 43 reads as follows:

Table 43		
Fuel and sulfur dioxide concentration limitations for fuel burning equipment located in Wayne county at a source other than a power plant		
Fuel type	**Maximum weight percent sulfur content in fuel[(a)] limitations for fuel-burning equipment**	**SO_2 ppmv emission rates corrected to 50% excess air**
Coal	**0.75**	**420**
Distillate oil Nos. 1 & 2	**0.30**	**120**
Crude and heavy oil Nos. 4, 5, & 6	**1.00**	**400**
(a) The determination of sulfur content (percent by weight) of fuel shall be carried out in accordance with a procedure acceptable to the department.		

(5) The use of fuels having sulfur contents as set forth in table 43 shall not allow degradation in the mass rate of particulate emissions, unless otherwise authorized by the department. The department may require source emission tests which may be performed by, or under the supervision of, the department at the expense of the owners and may require the submission of reports to the department both before and after changes are made in the sulfur content in fuel.

(6) The following provisions apply to persons in Wayne county:

(a) The maximum weight percent sulfur content in fuel limitations for fuel-burning equipment provisions of table 43 of this rule shall not apply to a person who uses a combination of fuels in such ratios as to meet the sulfur dioxide concentration limitations specified in table 43 and has obtained written approval from the department for this exemption. The allowable concentration limit will be based on the value in the table for the fuel having the higher allowable concentration limit.

(b) The maximum weight percent sulfur content in fuel limitations for fuel-burning equipment provisions of table 43 of this rule shall not apply to a person who has received an installation permit from the department for a control device to desulfurize the stack gases and the control device is installed and operating properly.

R 336.1404 Emission of **sulfur dioxide and** sulfuric acid mist from sulfuric acid plants.

Rule 404. **(1)** ~~After July 1, 1980,~~ It is unlawful for a person to cause or allow the emission of sulfuric acid mist from any sulfuric acid plant in excess of 0.50 pounds per ton of acid produced, the production being expressed as 100% ~~H_2SO_4~~ **sulfuric acid**.

(2) It is unlawful for a person in Wayne county to cause or allow sulfur dioxide emissions into the atmosphere from any sulfuric acid plant to exceed 6.5 pounds per ton of acid produced.

(3) Compliance with this ~~limit~~ **rule** shall be demonstrated using ~~reference test method 8~~ **a procedure acceptable to the department**.

R 336.1405 Emissions from sulfur recovery plants located within Wayne county.

Rule 405. At sulfur recovery plants located in Wayne county, a person shall not cause or allow the emission into the atmosphere of sulfur dioxide, sulfur trioxide, or sulfuric acid from any such sulfur recovery plant to exceed 0.01 pounds per pound of sulfur produced.

R 336.1406 Hydrogen sulfide emissions from facilities located within Wayne county.

Rule 406. (1) A person in Wayne county shall not cause or allow the combustion of any refinery process gas stream that contains hydrogen sulfide in a concentration of greater than 100 grains per 100 cubic feet of gas without removal of the hydrogen sulfide in excess of this concentration.

(2) When the odor of hydrogen sulfide is found to exist beyond the property line of a source, a person in Wayne county shall not cause or allow the concentration of hydrogen sulfide to exceed 0.005 parts per million by volume for a maximum period of 2 minutes.

R 336.1407. Sulfur compound emissions from sources located within Wayne county and not previously specified.

Rule 407. Both of the following apply to process and fuel burning equipment located within Wayne county to which the provisions of R 336.1401 to R 336.1406 do not apply.

(a) A person shall not cause or allow the emission into the atmosphere gases with a concentration of sulfur dioxide greater than 300 parts per million by volume, which shall be corrected to 50% excess air for fuel burning equipment.

(b) A person shall not cause or allow the emission into the atmosphere gases with a concentration of sulfuric acid or sulfur trioxide or a combination thereof greater than 15 milligrams per cubic meter, which shall be corrected to 50% excess air for fuel burning equipment.

R 336.1420. Applicability determinations, definitions, and permitting requirements under CAIR sulfur dioxide trading program.

Rule 420. (1) As used in this rule:

(a) "CAIR" means clean air interstate rule.

(b) "CAIR sulfur dioxide permit" means the permit required pursuant to 40 C.F.R. §97.202.

(c) "Michigan EGUs" means any stationary fossil fuel-fired boiler or stationary fossil fuel-fired combustion turbine serving, at any time since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts producing electricity for sale and geographically located in Michigan.

(2) The provisions of 40 C.F.R. §97.202 and the appropriate opt-in provisions of 40 C.F.R. §97.281 to §97.288 (2006) are adopted by reference in this rule and are applicable to these rules. Copies of 40 C.F.R. §§97.202 and 97.281 to §97.288 are available for inspection and purchase at the Department of Environmental Quality, Air Quality Division, 525 West Allegan Street, P.O.

Box 30260, Lansing, Michigan 48909-7760, at a cost as of the time of adoption of this rule of $70.00. Copies may also be obtained from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, at a cost as of the time of adoption of this rule of $60.00; or on the United States government printing office internet web site at www.access.gpo.gov.

(3) Michigan EGUs are required to apply for and receive a CAIR sulfur dioxide permit. This permit shall be administered in accordance with the procedural requirements of R 336.1214 and shall be incorporated into the facility's renewable operating permit as an attachment.

NOTICE OF PUBLIC HEARING

SOAHR 2005-036
NOTICE OF PUBLIC HEARING
DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

The Michigan Department of Environmental Quality (DEQ), Air Quality Division, will conduct a public hearing on proposed administrative rules promulgated pursuant to Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451); R 336.1401, R 336.1401a, R 336.1402, R 336.1404 to R 336.1407, and R 336.1420 (Rules 401, 401a, 402, 404-407, and 420). This rulemaking will amend Rules 401 to 407 addressing sulfur dioxide (SO_2) emitted in Wayne County. In addition, the DEQ is proposing to add Rule 420 to reduce transported emissions of SO_2 from electric generating units as part of the Clean Air Interstate Rule federal requirements.

The public hearing will be held on July 19, 2007, at 10:00 a.m., in the Brake Conference Room, Constitution Hall, Atrium South, 525 West Allegan Street, Lansing, Michigan.

Copies of the proposed rules (SOAHR 2005-036EQ) can be downloaded from the Internet at: http://www.michigan.gov/deqair. These rules can also be downloaded from the Internet through the State Office of Administrative Hearings and Rules at http://www.michigan.gov/orr. Copies of the rules may also be obtained by contacting the Lansing office at:

Air Quality Division
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48909-7760
Phone: 517-373-7045
Fax: 517-241-7499
E-Mail: halbeism@Michigan.gov

All interested persons are invited to attend and present their views. It is requested that all statements be submitted in writing for the hearing record. Anyone unable to attend may submit comments in writing to the address above. Written comments must be received by 5:00 p.m. on July 19, 2007.

Persons needing accommodations for effective participation in the meeting should contact the Air Quality Division at 517-373-7045 one week in advance to request mobility, visual, hearing, or other assistance.

This notice of public hearing is given in accordance with Sections 41 and 42 of Michigan's Administrative Procedures Act, 1969 PA 306, as amended, being Sections 24.241 and 24.242 of the Michigan Compiled Laws. Administration of the rules is by authority conferred on the Director of the DEQ by Sections 5503 and 5512 of Act 451, being Sections 324.5503 and 324.5512 of the Michigan Compiled Laws, and Executive Order 1995-18. These rules will become effective immediately after filing with the Secretary of State.

PROPOSED ADMINISTRATIVE RULES

SOAHR 2006-073

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND AND WATER MANAGEMENT DIVISION

GREAT LAKES BOTTOMLANDS PRESERVES

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the department of environmental quality by section 76111 of 1994 PA 451, MCL 324.76111.)

February 12, 2007

R299.6012 is added to the Michigan Administrative Code as follows:

R 299.6012 Grand Traverse Bay Great Lakes state bottomland preserve; establishment.
Rule 12. (1) The following described area is established as the Grand Traverse Bay Great Lakes state bottomland preserve:

An area of Lake Michigan bottomlands including the water surface described as: beginning at the point where the northernmost portion of Cathead Point, Leelanau County intersects the Ordinary High Water Mark (OHWM) of Lake Michigan (approximately 45°11'15"N, -85°37'04"W), thence northeasterly to a point in Lake Michigan lying at 45°13'54N, -85°33'14"W (north of Lighthouse Point, Leelanau County) thence proceeding easterly along latitude line 45°13'54"N until it intersects the OHWM in Charlevoix County (approximately 45°13'54"N, -85°23'19"W, north of Norwood), thence along the OHWM of Grand Traverse Bay generally southerly, westerly, and northerly, to the point of beginning, including all of the West and East arm of Grand Traverse Bay, excluding all islands above the ordinary high waterline of Lake Michigan and previously conveyed areas, containing 295 square miles, more or less.

NOTICE OF PUBLIC HEARING

SOAHR 2006-073
NOTICE OF PUBLIC HEARING
DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND AND WATER MANAGEMENT DIVISION

The Michigan Department of Environmental Quality (DEQ), Land and Water Management Division, will conduct a public hearing on proposed administrative rules promulgated pursuant to Part 761, Aboriginal Records and Antiquities of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451); R 299.6012. This rule would establish the Grand Traverse Bay Great Lakes State Bottomland Preserve.

The public hearing will be held on June 28, 2007, at 7 p.m. in Room 112 of the Great Lakes Maritime Academy building, Great Lakes Campus, Northwestern Michigan College, 715 E. Front Street, Traverse City, Michigan 49686.

Copies of the proposed rules (SOAHR 2006-073 EQ) can be downloaded from the Internet at www.michigan.gov/deqgreatlakes, select "Shipwrecks." These rules can also be downloaded from the Internet through the State Office of Administrative Hearings and Rules at http://www.michigan.gov/orr. Copies of the rules may also be obtained by contacting the Lansing office at:

Land and Water Management Division
Michigan Department of Environmental Quality
P.O. Box 30458
Lansing, Michigan 48909-7958
517 335-3471
Fax: 517 373-6917
E-Mail: graft@michigan.gov

All interested persons are invited to attend and present their views. It is requested that all statements be submitted in writing for the hearing record. Anyone unable to attend may submit comments in writing to the address above. Written comments must be received by 5:00 p.m. on Monday, July 9, 2007.

Persons needing accommodations for effective participation in the meeting should contact the Land and Water Management Division at (517) 335-3471 one week in advance to request mobility, visual, hearing, or other assistance.

This notice of public hearing is given in accordance with Sections 41 and 42 of Michigan's Administrative Procedures Act, 1969 PA 306, as amended, being Sections 24.241 and 24.242 of the Michigan Compiled Laws. Administration of the rules is by authority conferred on the Director of the DEQ by Section 76111 of 1994 PA 451, MCL 324.76111 and Executive Order 1995-18. These rules will become effective seven days after filing with the Secretary of State.

PROPOSED ADMINISTRATIVE RULES

SOAHR 2007-005

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

AIR POLLUTION CONTROL

Filed with the Secretary of State on

This rule becomes effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

Draft 2/28/2007

(By authority conferred on the director of the department of environmental quality by sections 5503 and 5512 of 1994 PA 451, MCL 324.5503 and 324.5512, and Executive Reorganization Order No. 1995-18, MCL 324.99903)

R 336.2201, R 336.2202, R 336.2203, R 336.2204, R 336.2205, R 336.2206, R 336.2207, R 336.2208, R 336.2209, R 336.2210, R 336.2211, R 336.2212, R 336.2213, R 336.2214, R 336.2215, R 336.2216, R 336.2217, and R 336.2218 of the Michigan Administrative Code are rescinded as follows:

Part 12. Emission Averaging and Emission Reduction Credit Trading

R 336.2201 **Rescinded.** ~~Definitions.~~

~~Rule 1201. As used in this part:~~

~~(a) "Actual emissions" means the average rate, in tons per year, tons per ozone season, or other applicable averaging period, at which the source, process, or process equipment actually emitted an air contaminant during a selected averaging period.~~

~~(b) "Area sources" means stationary sources that are not individually included in the stationary source emissions inventory, but are reported collectively.~~

~~(c) "Attainment area" means any area of the state designated or redesignated by the administrator of the United States environmental protection agency in accordance with section 107(d) of the federal clean air act and 40 C.F.R. part 81 as having attained the relevant national ambient air quality standard for a given criteria pollutant.~~

~~(d) "Attainment demonstration" means a federally approved plan that is in compliance with the requirements of section 172(c) and section 182 of the federal clean air act.~~

~~(e) "Baseline," as it pertains to the generation of emission reduction credits, means the level of emissions beyond which reductions must occur for an emission reduction credit to be generated. Alternate emission limits above an applicable reasonably available control technology emission limit~~

may not be used as a baseline. As it pertains to the use of emission reduction credits, the term "baseline" means the allowed level of emissions specified by the applicable requirement with which emission reduction credits will be used to maintain compliance.

(f) "BIAS" means a systematic error in the result of a measurement or estimate.

(g) "Bubble" means an activity in which 2 or more sources, processes, or process equipment that are at 1 contiguous location and that are under common ownership or control exchange overages of emissions for compensating reductions of emissions, which results in equivalent or reduced emissions as compared to the emissions that would result if the applicable emission standards or limits were applied separately to each source, process, or process equipment.

(h) "Calendar year" means the period of time between January 1 and December 31, inclusive, for a given year.

(i) "Conservative results," as it applies to calculations of emission reduction credits generated or used under this part, means that the number of emission reduction credits generated is not overestimated and that the number of emission reduction credits needed is not underestimated.

(j) "Criteria pollutants" means air pollutants listed by the administrator of the United States environmental protection agency under section 108 of the federal clean air act.

(k) "Curtailment" means a permanent reduction in the hours of operation or the process rate, excluding operational changes to mobile sources.

(l) "Department" has the meaning ascribed to it in section 301(b) of the act.

(m) "Emission averaging" means an activity in which 2 or more existing sources, processes, or process equipment in the same source category, subject to reasonably available control technology requirements, compensate for overages of emissions by contemporaneous reductions of emissions, which results in equivalent or reduced emissions as compared to the individually allowable emission rate applied separately to each source, process, or process equipment.

(n) "Emission averaging plan" means a plan which describes the equipment that will engage in emission averaging and which contains the information required by R 336.2213.

(o) "Emission inventory" means the source, process, and process equipment inventory and emission reports required to be submitted annually to the department for sources of an air contaminant, under section 5503(k) of the act and R 336.202 and, in addition, the source, process, and emission data for stationary, area, and mobile sources upon which the department evaluates air quality and upon which the federally approved state implementation plan or the most recent state implementation plan revision submittal is based.

(p) "Emission monitoring and quantification protocol" means an accurate and replicable method or procedure for determining the amount, rate, and characteristics of baseline emissions, and emission reductions below baseline emissions, for purposes of emission reduction credit generation under this part.

(q) "Emission reduction credit" means the unit of reduction in actual emissions of a pollutant which is expressed in tons of pollutant reduced during a specified calendar year or ozone season and which is entered into the emission trading registry.

(r) "Enforceable" means any standard, requirement, limitation, or condition which is established by an applicable federal or state regulation, which is specified in a permit issued or order entered under a federal or state regulation, or which is contained in a state implementation plan approved by the administrator of the United States environmental protection agency and which can be enforced by the department and the administrator of the United States environmental protection agency.

(s) "Mobile source" means any vehicle or engine that is used for on-highway or non-road purposes, the mobile source-related fuel or fuel delivery system used by the vehicle or engine, or both, and the operation strategies associated with the vehicle or engine. For the purpose of this definition, non-road vehicles and engines include all non-road vehicles and engines used in marine vessels, locomotives, and

~~airplanes, as well as non-road vehicles and engines described in the definition of "non-road" contained in the federal clean air act or applicable federal guidance.~~

~~(t) "National ambient air quality standard" means a primary or secondary standard established by the administrator of the United States environmental protection agency under section 109 of the federal clean air act.~~

~~(u) "New source review" means the permitting requirements for major new and modified sources contained in parts C and D of title I of the federal clean air act and in 40 C.F.R. §§51.165, 51.166, and 52.21.~~

~~(v) "Offset" means the use of an emission reduction credit to compensate for emission increases of volatile organic compounds or criteria pollutants, except ozone, from a major new or major modified stationary source subject to the requirements of R 336.1220 and section 173 of the federal clean air act.~~

~~(w) "Overage" means emissions above the emissions specified by an applicable requirement.~~

~~(x) "Ozone season" means the period of time beginning on and including April 1 and continuing through September 30 of each calendar year.~~

~~(y) "Permanent" means that the relevant change in operating procedures, control equipment, or other source of emission reductions shall be continuous for the period during which emission reductions are made for the purpose of generating emission reduction credits.~~

~~(z) "Quantifiable" means that the amount, rate, and characteristics of emissions and emission reductions can be measured through an accurate, reliable, and replicable method established by an applicable requirement or approved by the department or the administrator of the United States environmental protection agency.~~

~~(aa) "Real" means a change in the operation or control of a source, process, or process equipment that results in a reduction in actual emissions.~~

~~(bb) "Reasonable further progress" means any incremental emission reductions required to fulfill the requirements of section 182(b)(1)(a) and (c)(2)(b) of the federal clean air act or specified in the federally approved state implementation plan.~~

~~(cc) "Replicable" means the use of a collection, analytical, or quantification method or procedure that will yield results equivalent to results obtained by the application of the method or procedure by different persons.~~

~~(dd) "Retire" means to permanently remove emission reductions or emission reduction credits from circulation to provide an environmental benefit.~~

~~(ee) "Shutdown" means the permanent cessation of operation of a source, process, or process equipment for any purpose, excluding vehicle scrappage.~~

~~(ff) "Source" means a stationary source, an area source, or a mobile source.~~

~~(gg) "State implementation plan" means the state implementation plan and revisions to the plan that have been approved by the administrator of the United States environmental protection agency under the applicable provisions of the federal clean air act.~~

~~(hh) "Surplus" means emission reductions made below an established source baseline which are not required in any of the following and which are not mandated by any applicable requirement:~~

~~(i) The state implementation plan.~~

~~(ii) An applicable federal implementation plan.~~

~~(iii) An applicable attainment demonstration.~~

~~(iv) A reasonable further progress plan.~~

~~(v) A maintenance plan.~~

~~(ii) "Trade" means the purchase, sale, conveyance, or other transfer of a registered emission reduction credit from one person to another person.~~

~~(jj) "Use" means the application of a registered emission reduction credit at a source to compensate for an emission overage of equal magnitude above a level that has been established by an applicable requirement within the specified life of the emission reduction credit.~~

R 336.2202 **Rescinded.** ~~Purpose.~~

~~Rule 1202. The purpose of this part is to establish a voluntary statewide emission averaging and emission reduction credit trading program that has all of the following goals:~~

~~(a) Attaining and maintaining national ambient air quality standards for all criteria pollutants.~~

~~(b) Creating market-based incentives for emission reductions of criteria pollutants and volatile organic compounds as a surrogate for ozone.~~

~~(c) Encouraging early emission reductions and technological innovations to reduce emissions.~~

~~(d) Allowing operational flexibility under a renewable operating permit consistent with the act, R 336.1215, and the federal clean air act.~~

~~(e) Providing for emission averaging and providing for the generation of emission reduction credits to be used or traded for offsets and cost effective compliance with emission standards and limitations established by applicable requirements.~~

~~(f) Assuring that emission reductions and emission reduction credits are real, surplus, enforceable, permanent, and quantifiable.~~

~~(g) Requiring that emission averaging and the use of emission reduction credits are consistent with the act, rules promulgated under the act, the state implementation plan, and the federal clean air act.~~

R 336.2203 **Rescinded.** ~~Applicability.~~

~~Rule 1203. (1) This part applies to all persons who, and sources that, voluntarily choose to participate in an emission averaging or emission reduction credit trading program.~~

~~(2) Emission averaging and the use of emission reduction credits under this part applies only to volatile organic compounds as a class of compounds, oxides of nitrogen as an ozone precursor, and all criteria pollutants, except ozone.~~

~~(3) Emission reduction credits generated by a stationary source or an area source reduction may be used to comply with requirements for mobile source emission reductions in a manner consistent with the federal clean air act. Emission reduction credits generated by a mobile source emission reduction may be used to comply with requirements for stationary or area source emission reductions in a manner consistent with the federal clean air act.~~

~~(4) Nothing in this part shall be construed to prohibit offsetting consistent with R 336.1220, section 173 of the federal clean air act, or 40 C.F.R. parts 51 and 52.~~

R 336.2204 **Rescinded.** ~~Prohibitions and restrictions.~~

~~Rule 1204. (1) Emission averaging and the use of emission reduction credits in an attainment area shall not cause a violation of a national ambient air quality standard, allotted prevention of significant deterioration increments, or an applicable attainment area maintenance plan. Emission averaging and the use of emission reduction credits in a nonattainment area shall result in emission reductions consistent with the requirements for reasonable further progress for the nonattainment area and the attainment demonstration specified in the state implementation plan.~~

~~(2) Emission averaging and the use of emission reduction credits is prohibited for both of the following:~~

~~(a) In place of installing equipment determined to constitute, or for the purposes of complying with a best available control technology requirement for a specific toxic air contaminant established under R 336.1230, an emission limitation or work practice standard established by federal new source~~

~~performance standards under section 111 of the federal clean air act and 40 C.F.R. part 60, an emission limitation or work practice standard established under the national emission standards for hazardous air pollutants under section 112 of the federal clean air act and 40 C.F.R. part 61, or a maximum achievable control technology requirement established for a hazardous air pollutant under section 112 of the federal clean air act.~~

~~(b) In place of installing equipment determined to constitute a best available control technology requirement established under section 165 of the federal clean air act or R 336.1702 or the lowest achievable emission rate established under section 173 of the federal clean air act or R 336.1220. Emission averaging or the use of emission reduction credits for the purpose of complying with a best achievable control technology emission rate established under section 165 of the federal clean air act or R 336.1702 or the lowest achievable emission rate established under section 173 of the federal clean air act or R 336.1220 shall be allowed only where a source, process, or process equipment has been properly installed and is properly operated and maintained.~~

~~(3) Emission averaging and the use of emission reduction credits that would result in an increase in the maximum hourly emission rate of a toxic air contaminant from an emission unit at an existing stationary source or from an existing area source are prohibited, unless it is demonstrated to the department that the increased hourly emission rate will not cause or exacerbate the exceedance of a toxic air contaminant health-based screening level based on an analysis of the predicted ambient impact as specified in R 336.1230.~~

~~(4) Emission averaging or the use of emission reduction credits resulting in an increase in the emission of any of the following pollutants may be prohibited if the department determines that the averaging or use would be inconsistent with the act, rules promulgated under the act, or the protection of the public health, safety, or welfare:~~

~~(a) Mercury.~~
~~(b) Alkylated lead compounds.~~
~~(c) Cadmium.~~
~~(d) Arsenic.~~
~~(e) Chromium.~~
~~(f) Polychlorinated biphenyls.~~
~~(g) Chlordane.~~
~~(h) Octachlorostyrene.~~
~~(i) Toxaphene.~~
~~(j) Hexachlorobenzene.~~
~~(k) Benzo(A)pyrene.~~
~~(l) DDT and its metabolites.~~
~~(m) 2,3,7,8-tetrachlorodibenzo-p-dioxin.~~
~~(n) 2,3,7,8-tetrachlorodibenzofuran.~~

~~(5) Emission reduction credits for 1 criteria pollutant or ozone precursor shall not be used to allow emission overages of a different criteria pollutant or ozone precursor, except for interstate trading where the use is consistent with a regional ozone control strategy and the state implementation plan.~~

~~(6) Emission reduction credits of volatile organic compounds, as a class of compounds, may be used to compensate for emission overages of volatile organic compounds, as a class of compounds, but shall not be used to allow emission overages of a specific volatile organic compound, except where a demonstration has been made to the department that the use would result in an environmental benefit in the use area.~~

~~(7) The use of emission reduction credits to comply with a federal requirement in any area that has or needs a federally approved attainment demonstration or maintenance plan is prohibited where the~~

~~emission reduction credits were generated through the shutdown of a source, process, or process equipment, except where either subparts (a) or (b) of this subrule are applicable as follows:~~

~~(a) The department has demonstrated, to the satisfaction of the United States environmental protection agency, that the relevant approved attainment demonstration or maintenance plan will not be compromised by the use of such emission reduction credits.~~

~~(b) Such emission reduction credits are to be used for purposes of offsetting in a manner consistent with federal new source review requirements.~~

~~(8) Nothing in this part shall be construed to obviate the need to obtain a permit to install under R 336.1201, to obtain a renewable operating permit under R 336.1210, for modification of a renewable operating permit as required by R 336.1216, or for renewal of an operating permit as required by R 336.1217. The use of emission reduction credits which would be inconsistent with federal new source review requirements is prohibited.~~

~~(9) The use of sulfur dioxide or oxides of nitrogen emission reduction credits under this part at affected sources subject to sulfur dioxide or oxides of nitrogen allowance allocations under the 1990 amendments to title IV of the clean air act is allowed only to the extent that the sulfur dioxide or oxides of nitrogen emission reduction credits are not used or transferred under the 1990 amendments to title IV of the clean air act. Nothing in this part shall be construed to interfere with the free trade provisions under the 1990 amendments to title IV of the clean air act.~~

~~(10) Emission reductions made to correct violations of any applicable emission standard or limitation or emission reductions resulting from a source, process, or process equipment in violation of an applicable monitoring, reporting, or recordkeeping requirement shall not be eligible for emission averaging or to generate emission reduction credits to be used or traded under this part.~~

~~(11) Emission reductions used to compensate for contemporaneous emission overages in emission averaging under this part shall not be eligible for generating emission reduction credits.~~

~~(12) Emission reduction credits shall not be used to comply with federally mandated mobile source requirements, except conformity where the emission reduction credits were generated in the conformity area.~~

~~(13) Emission reductions that are not real, surplus, enforceable, permanent, and quantifiable shall not be eligible for emission averaging or emission reduction credit generation, use, or trading.~~

~~(14) If emission reduction credits are generated and used within the same facility, then the use of emission reduction credits for a specific pollutant shall not result in an overall increase in the emissions of the specific pollutant from the facility.~~

R 336.2205 **Rescinded.** ~~Ozone season restrictions.~~

~~Rule 1205. (1) Emission reduction credits for volatile organic compounds and oxides of nitrogen generated during an ozone season may be used any time during a calendar year, but emission reduction credits used for the purpose of compliance with an ozone season emission limitation for volatile organic compounds or oxides of nitrogen shall have been generated during an ozone season.~~

~~(2) Emission reduction credits generated for volatile organic compounds and oxides of nitrogen exclusively during the non-ozone season shall be used only during the non-ozone season in the same or a subsequent calendar year.~~

R 336.2206 **Rescinded**. ~~Emission averaging.~~

~~Rule 1206. (1) Emission reductions from existing sources, processes, or process equipment which compensate for emission overages from other existing sources, processes, or process equipment in the same source category and which are subject to reasonably available control technology emission standards or limitations or other emission standards or limitations applicable to existing sources,~~

processes, or process equipment as approved by the department shall be contemporaneous and of a nature and quantity that the net emissions during the averaging period specified in subrule (4) of this rule are at all times equal to or less than the sum of the emissions based on the applicable emission limits applied individually to each source, process, or process equipment after contribution of an air quality benefit determined under subrule (3) of this rule.

(2) The emission rate baseline for sources making emission reductions in an emission averaging plan shall be based on the lower of the actual or allowable emission rate and shall be determined by using the most representative, accurate, and reliable process and emission data available for the 2-year period or 2 ozone seasons, whichever is applicable, before the date that the emission reductions occur, unless it can be demonstrated to the department that a different time period is representative of historical operations and is consistent with the state implementation plan. The emission rate baseline shall be determined by using actual emission data or operational parameters of actual operating hours, production rates and the quantities of materials processed, stored, or combusted, and emission monitoring methods specified by an applicable requirement or approved by the department. The emission rate baseline shall not exceed a level specified in the emissions inventory that is relied upon in the state implementation plan or an emission standard or limitation specified by an applicable requirement.

(3) For purposes of emission averaging, the following condition shall be satisfied in order for emission reductions at a source, process, or process equipment to compensate for increased emissions and provide a 10% net air quality benefit ($10\%\,AQ_{ben}$):

$$F_a \times EL_a + F_b \times EL_b + \ldots + F_n \times EL_n \geq F_a \times ER_a' + F_b \times ER_b + \ldots + F_n \times ER_n$$

Where:

$ER_a' = ER_a + 10\%\,AQ_{ben} = ER_a + 0.10 \times (EL_a - ER_a) = 0.90 \times ER_a + 0.10 \times EL_a$

$F_a, F_b,$ and F_n = Actual fractional contribution of units a, b and n, respectively, to the total utilized capacity of all units in the averaging plan during the averaging period determined under subrule (4) of this rule.

$EL_a, EL_b,$ and EL_n = The baseline emission rates of units a, b and n, as determined under subrule (2) of this rule, in appropriate units.

$ER_a, ER_b,$ and ER_n = Actual emission rates of units a, b and n, respectively, in units consistent with the applicable emission limits.

As written, unit a is the unit making the emission reductions to compensate for increased emissions from units b through n. The emission rate of unit a shall not exceed an emission standard or limitation specified by an applicable requirement.

(4) Quantification of emissions for purposes of emission averaging for volatile organic compounds and oxides of nitrogen shall be based on a 30-day rolling average determined on a daily basis or other time period as approved by the department. Quantification of emissions for purposes of emission averaging for criteria pollutants, except ozone and oxides of nitrogen, shall be based on a time period specified by an applicable requirement.

(5) An emission averaging plan may include any number of sources, processes, or process equipment and may specify alternate sources, processes, or process equipment that would provide supplemental emission reductions if a shutdown of any of the original reducing sources, processes, or process equipment occurs.

R 336.2207 **Rescinded**. Emission reduction credit baseline.

Rule 1207. (1) The emission baseline from which emission reduction credits may be generated shall be established to determine the amount of actual emissions from a source, process, or process equipment

~~before the initiation of an activity to reduce emissions for the purposes of creating emission reduction credits. The emission baseline shall be expressed in tons of pollutant emitted per ozone season or per year.~~

~~(2) The emission baseline from which emission reduction credits may be generated shall be determined by using the most representative, accurate, and reliable process and emission data available for the source, process, or process equipment according to the following hierarchy:~~

~~(a) If required to demonstrate compliance with an applicable requirement or where such measurement is practicable and reasonable, then a person shall use continuous emission monitoring or other direct measurement, parametric monitoring, or other surrogates for the measurement of emissions to determine the emission baseline. The baseline shall be established for the 2-year period or 2 ozone seasons before the date that an emission reduction occurs, unless it can be demonstrated to the department that a different time period is more representative of historical operations and is consistent with the state implementation plan.~~

~~(b) If continuous emission monitoring or other direct measurement, parametric monitoring, or other surrogate measurement of emissions is not required by an applicable requirement or is not practical and reasonable, then a person shall calculate the emissions according to whichever of the following provisions is applicable:~~

~~(i) For a stationary source, the emission baseline shall be established by using process and emission data for a source, process, or process equipment for the 2-year period or 2 ozone seasons before the date that an emission reduction occurs, unless it can be demonstrated to the department that a different time period is more representative of historical operations and is consistent with the state implementation plan. The emission baseline from which emission reduction credits may be generated shall be measured using an emission monitoring and quantification protocol that satisfies the requirements of R 336.2209. The emission baseline shall be determined by using actual emission data or operational parameters of process equipment, actual operating hours, production rates and quantities of materials processed, stored, or combusted, and the emission monitoring methods specified by an applicable requirement or approved by the department. The stationary source baseline shall be calculated by using the following equation:~~

$$BL = ER \times CU \times H$$

~~Where:~~

~~BL = Baseline, expressed in tons of pollutant per ozone season or year, whichever is applicable.~~

~~ER = The lower of the actual or allowable emission rate for the source, process, or process equipment, expressed as the quantity of emissions per unit of production, time, or other parameter consistent with the units of the capacity utilization factor and calculated under this subdivision and subrule (3) of this rule.~~

~~CU = Capacity utilization factor, which is representative of the historical level of operation or production rate of the source, process, or process equipment based on average historical values calculated under this subdivision and subrule (3) of this rule. The capacity utilization factor shall not exceed an emission standard or limitation specified by an applicable requirement.~~

~~H = Hours of operation of the source, process, or process equipment based on the average of actual operating hours representative of historical operations as determined under this subdivision.~~

~~(ii) For an area source, the emission baseline from which emission reduction credits may be generated shall be established by using the actual emission data or an emission rate specified by an applicable requirement or approved by the department and shall be measured using an emission monitoring and quantification protocol that satisfies the requirements of R 336.2209. If an emission rate specified by an applicable requirement is used, then the baseline calculation shall incorporate an average activity factor determined by using actual operating hours, production or throughput rates, and quantities of materials used, applied, processed, stored, or combusted. The parameters shall be measured using~~

monitoring methods specified by an applicable requirement or approved by the department. The emission baseline shall be calculated by using the following equation:

$$BL = ER \times AAF$$

Where:

BL = Baseline, expressed in tons of pollutant per ozone season or year, whichever is applicable.

ER = The lower of the actual or allowable emission rate for the source, process, or process equipment, where specified by an applicable requirement. If the emission rate has not been established by an applicable requirement, then the rate shall be consistent with the state implementation plan and the most recent emission inventory and shall be approved by the department. The emission rate shall be averaged under subrule (3) of this rule and determined under paragraph (i) of this subdivision.

AAF = Average activity factor, which is based on average historical values as determined under paragraph (i) of this subdivision and is consistent with the units used for the emission rate and consistent with the state implementation plan.

(iii) The mobile source baseline from which emission reduction credits may be generated shall either be established based on the expected level of mobile source emissions that would occur without an emission reduction action being implemented or shall be established by using actual historical emission data and activity levels for the 2-year period or 2 ozone seasons before the date that an emission reduction occurs, or a different baseline time period may be used if it can be demonstrated to the department that the different time period is more representative of historical operations or activity levels and is consistent with the state implementation plan. The baseline shall be measured using an emission monitoring and quantification protocol that satisfies the requirements of R 336.2209. The methods, procedures, and activity levels used to calculate the baseline for mobile sources shall be consistent with the methods, procedures, and activity levels specified in the state implementation plan. If actual historical data and activity levels are used to determine the baseline, then the baseline shall be calculated using the following equation:

$$BL = ER \times AF$$

Where:

BL = Baseline, expressed in tons of pollutant per ozone season or year.

ER = Actual emission rates or emission rates determined by using a mobile model or other procedure approved by the United States environmental protection agency or the department.

AF = Actual emission data or throughput rates, quantities of materials processed, stored, transported or combusted, process or operational changes, highway vehicle or non-road equipment modifications or replacement for emission reductions.

If a period of historical operations and actual emission data or activity levels cannot be used to determine the baseline, then the baseline shall be calculated based on the expected or projected emissions that would occur without an emission reduction action being implemented to generate a reduction.

(3) Quantification of emissions for purposes of emission reduction credit generation for volatile organic compounds and oxides of nitrogen shall be based on a 30-day rolling average determined on a daily basis or other time period as approved by the department. Quantification of emissions for purposes of emission reduction credit generation for criteria pollutants, except ozone and oxides of nitrogen, shall be based on a time period specified by an applicable requirement.

(4) Quantification methods that are more representative, accurate, and reliable than methods specified by an applicable requirement may be used to determine the emission baseline upon approval by the department or the administrator of the United States environmental protection agency.

(5) Any baseline calculated under subrule (2) of this rule shall be adjusted by subtracting from the baseline any emission increases from another source, process, or process equipment in the same source

~~category and under common ownership or control resulting from a shutdown or curtailment of the source, process, or process equipment making the emission reductions.~~

R 336.2208 **Rescinded.** ~~Eligibility of emission reductions for emission averaging and emission reduction credits; generation and calculation.~~

~~Rule 1208. (1) For emission reductions to be eligible for emission averaging or to generate emission reduction credits, all of the following conditions shall be met:~~

~~(a) For all criteria pollutants, in addition to volatile organic compounds and oxides of nitrogen, the emissions shall be included in Michigan's state emission inventory system.~~

~~(b) The emission reductions shall have been generated on or after January 1, 1991, and not have previously been used to meet emission offset requirements under section 173 of the federal clean air act or R 336.1220, or for demonstrating attainment or maintenance of any applicable national ambient air quality standard under the state implementation plan.~~

~~(c) The emission reductions shall be real, surplus, enforceable, permanent, and quantifiable.~~

~~(d) Emission reductions for the purpose of emission averaging shall only be used for emission averaging between sources under common ownership or control.~~

~~(2) Emission reductions for emission averaging or to generate emission reduction credits may be created using any of the following procedures, except for the procedures listed in subdivisions (g) and (i) of this subrule, which may only be used to create reductions to generate emission reduction credits:~~

~~(a) Installation or modification of air pollution control equipment.~~

~~(b) Modification of process or process equipment.~~

~~(c) Reformulation of raw materials or products.~~

~~(d) Implementation of energy conservation programs.~~

~~(e) Implementation of operational changes.~~

~~(f) Implementation of pollution prevention programs.~~

~~(g) Curtailment or shutdown of a source, process, or process equipment.~~

~~(h) Implementation of early emission reductions before any compliance dates established by an applicable requirement.~~

~~(i) Implementation of area and mobile source controls if a baseline can be established and, where applicable, emission monitoring and quantification protocols and compliance monitoring methods can be determined in a manner approved by the department or the administrator of the United States environmental protection agency.~~

~~(j) Any activity which is approved by the department and which results in emission reductions.~~

~~(3) Emission reductions eligible for registration as emission reduction credits shall be determined by either of the following methods, as applicable:~~

~~(a) For emission reductions that have already occurred, subtracting from the baseline the actual annual emissions after the emission reduction method has been implemented, which shall be calculated in a manner consistent with that used to establish the baseline under R 336.2207.~~

~~(b) For emission reductions that will occur, subtracting from the baseline the expected annual emissions after the proposed emission reduction method is implemented, which shall be calculated in a manner consistent with that used to establish the baseline under R 336.2207.~~

~~(4) Emission reduction credits may be generated for volatile organic compounds, as a class of compounds, and criteria pollutants, except ozone, by emission reductions resulting from the installation of a maximum achievable control technology required for a hazardous air pollutant under section 112 of the federal clean air act.~~

~~(5) Emission reductions resulting from a curtailment of operations at a source, process, or process equipment shall be eligible for emission reduction credit generation only if the notice of emission~~

~~reduction credit generation and certification corresponding to the emission reductions is submitted before the curtailment of operations.~~

~~(6) Emission reductions resulting from the shutdown of a source, process, or process equipment shall be eligible for emission reduction credit generation for a period of 5 calendar years from the year the source has shut down if the emission reduction credits are used for purposes of compliance with an applicable emission standard or limitation.~~

~~(7) Emission reduction credits shall have been generated before being used or traded.~~

R 336.2209 **Rescinded**. ~~Emission monitoring and quantification.~~

~~Rule 1209. (1) Each person who engages in emission averaging or who generates emission reduction credits under this part shall comply with an emission monitoring and quantification protocol which has been federally approved for purposes of emission averaging or emission reduction credit trading, where such a protocol exists for the source category. Modifications to an existing federally approved emission monitoring and quantification protocol for purposes of emission averaging or emission reduction credit trading shall be approved by the department and federally approved as a revision to Michigan's state implementation plan.~~

~~(2) If a federally approved emission monitoring and quantification protocol for the purposes of emission averaging or emission reduction credit trading does not exist for a source category, then a person who engages in emission averaging or who generates emission reduction credits under this part shall comply with 1 of the following:~~

~~(a) An existing emission monitoring and quantification protocol that has been approved by the department or the United States environmental protection agency for purposes of demonstrating compliance with applicable requirements, if the protocol meets the criteria specified in subrule (6) of this rule and, if applicable, subrule (7) of this rule.~~

~~(b) A new or alternate emission monitoring and quantification protocol that has been approved by the department for purposes of emission averaging or emission reduction credit trading under subrule (3) of this rule.~~

~~(3) The owner or operator of a source seeking approval to use a new or alternate emission monitoring and quantification protocol shall submit a written request to the department not less than 30 days before the submittal of the notice of generation. The written request shall include the information specified in subrules (6) and (7) of this rule, as applicable.~~

~~(4) Emission reduction credits shall be quantified in units of tons per year for criteria pollutants, excluding oxides of nitrogen and ozone, and in units of tons per year or tons per ozone season for volatile organic compounds and oxides of nitrogen.~~

~~(5) Emission monitoring and quantification protocols to quantify emissions, emission reductions, and the use of emission reduction credits shall be credible, accurate, workable, enforceable, and replicable and may include any of the following:~~

~~(a) Continuous emission monitoring, parametric monitoring, stack testing, sampling of fuels and materials, or other direct and indirect measurements of emissions.~~

~~(b) Calculations using equations that are a function of process and control equipment.~~

~~(c) Mass-balance calculations.~~

~~(d) Emission factors, emission calculation methods, or emission quantification protocols approved for use at the time of emission reduction generation by the department or the administrator of the United States environmental protection agency.~~

~~(e) Methods, procedures, and calculations to ensure that conservative results are obtained.~~

~~(6) Emission monitoring and quantification protocols to be used for purposes of emission reduction credit generation under this part shall meet all of the following requirements, as applicable:~~

~~(a) Actual emissions data shall be used where the data are available.~~
~~(b) Sufficient data shall be collected to characterize the source, process, or process equipment.~~
~~(c) Instrumentation shall have sufficient sensitivity, selectivity, precision, accuracy, and range to measure the applicable parameters that characterize the operation of the source, process, or process equipment.~~
~~(d) Where applicable, quality assurance/quality compliance plans for data collection shall be adhered to.~~
~~(e) Applicable test methods that have been approved by the United States environmental protection agency shall be used where available, unless an alternate test method is approved by the department and the United States environmental protection agency as a revision to Michigan's state implementation plan.~~
~~(f) Where applicable, oxides of nitrogen emissions shall be measured as nitrogen oxide and nitrogen dioxide, but shall be reported on a nitrogen dioxide basis.~~
~~(g) Where applicable, volatile organic compound emissions shall be calculated on the basis of actual emissions if the source, process, or process equipment uses speciated measurement techniques. If volatile organic compound emission measurements are based on a surrogate compound, but information is available on the emissions composition, then volatile organic compound emissions shall be calculated based on the known composition. If the emissions composition is not known, then measured volatile organic compound emissions shall be calculated on the basis of propane.~~
~~(h) Continuous or predictive emission monitoring systems shall be used where they are already in place, and the following requirements shall apply to the monitoring systems, as applicable:~~
~~(i) 40 C.F.R. part 60, appendix F, continuous quality assurance procedures shall be applied to continuous emission monitoring systems.~~
~~(ii) The United States environmental protection agency's promulgated performance specifications shall be applied to predictive emission monitoring systems.~~
~~(i) Promulgated state and federal procedures that are intended for the development of emission monitoring and quantification protocols.~~
~~(7) Notwithstanding the provisions of subrule (6) of this rule, emission monitoring and quantification protocols for use under this part for the generation of emission reduction credits at mobile sources shall be consistent with the following, as applicable:~~
~~(a) Federally approved mobile models for the emission reduction credit generation year.~~
~~(b) Measurement and calculation methods that have been approved for use by the department or the administrator of the United States environmental protection agency.~~
~~(c) Promulgated state and federal procedures that are intended for the development of emission monitoring and quantification protocols.~~
~~(8) The department shall make any pre-approved emission monitoring and quantification protocol available upon request.~~

R 336.2210 **Rescinded.** ~~Recordkeeping requirements.~~
~~Rule 1210. (1) A person who engages in emission averaging or who generates, uses, or trades emission reduction credits under this part shall keep records of all information required to be submitted pursuant to R 336.2213 and R 336.2214, as applicable, as well as other records required under this part and any other records specified by an applicable requirement.~~
~~(2) Records shall be kept in a manner acceptable to the department and shall be maintained at the source or sources where emission averaging takes place or where the emission reduction credits are generated or used or other location acceptable to the department. The records shall be maintained for~~

~~not less than 5 years after the date of expiration of the emission averaging plan or for not less than 5 years after the date each emission reduction credit is used, expired, or retired.~~

R 336.2211 **Rescinded.** ~~Emission averaging and use of emission reduction credits within and between geographic areas and sources.~~

~~Rule 1211. (1) Emission averaging and the use of emission reduction credits may take place within and between geographic areas and source categories as specified in this part.~~

~~(2) Intersector use of emission reduction credits among mobile sources, stationary sources, and area sources is allowed, except as restricted by R 336.2203, R 336.2204, and the federal clean air act.~~

~~(3) Emission reduction credits used to provide emission offsets at a new or modified source shall be in compliance with all of the following provisions:~~

~~(a) Be generated in the nonattainment area where the new or modified source is to be located or an adjacent nonattainment area of equal or higher classification that contributes to the exceedance of a national ambient air quality standard in the nonattainment area where the new or modified source is to be located.~~

~~(b) Be in accordance with section 182 of the federal clean air act and R 336.1220.~~

~~(c) Where emission reduction credits are used to comply with new source review requirements, all of the following conditions shall be met:~~

~~(i) The department shall approve the use of emission reduction credits that meet the following criteria.~~

~~(A) For a new source, the emission reduction credits shall cover a minimum of 2½ years of operation.~~

~~(B) For a modified source, the emission reduction credits shall cover the period of time beginning on the date of issuance of the new source review permit and continuing until the date of issuance or renewal of an operating permit.~~

~~(C) For renewal of an operating permit, the emission reduction credits shall cover a period of 5 years or the term for which the permit is issued.~~

~~(ii) The new source review permit shall contain an enforceable commitment that, before receiving any operating permit or operating permit renewal, the operating permit shall contain an enforceable condition that requires the source to obtain offsets for a period of 5 years or the period of time for which the operating permit is issued before continuing to operate.~~

~~(iii) Operating permits shall contain an enforceable condition that requires the source to either provide or obtain additional offsets before renewal of an operating permit and continuing to operate.~~

~~(4) Oxides of nitrogen emission reduction credits or emission reductions for emission averaging may be used under this part in any area of the state of Michigan, if at least 1 of the following conditions is satisfied:~~

~~(a) The emission reduction credits or emission reductions for emission averaging are proposed to be used in the same geographic area where the emission reduction credits or emission reductions for emission averaging were generated.~~

~~(b) The geographic area where the emission reduction credits or emission reductions for emission averaging are proposed to be used is an attainment area for nitrogen dioxide.~~

~~(c) The geographic area where the emission reduction credits or emission reductions for emission averaging are proposed to be used is a nonattainment or maintenance area for nitrogen dioxide, and the area where the emission reduction credits or emission reductions for emission averaging were generated is an adjacent area that contributes to the nitrogen dioxide air quality problem in the proposed use area.~~

~~(5) Volatile organic compound emission reduction credits or emission reductions for emission averaging are eligible to be used under this part in any area of the state of Michigan that is an attainment area for ozone.~~

~~(6) The use of volatile organic compound emission reduction credits or emission reductions for emission averaging in an ozone nonattainment or maintenance area shall only be allowed if at least 1 of the following conditions is satisfied:~~

~~(a) The source, process, or process equipment that generated the emission reduction credits or emission reductions for emission averaging is located in the ozone nonattainment or maintenance area where the emission reduction credits or emission reductions for emission averaging are proposed to be used.~~

~~(b) The source, process, or process equipment that generated the emission reduction credits or emission reductions for emission averaging is located in any county which, in whole or in part, lies within 100 kilometers of the nearest border of the nonattainment or maintenance area where the emission reduction credits or emission reductions for emission averaging are proposed to be used.~~

~~(7) Contiguous nonattainment areas, contiguous maintenance areas, and contiguous nonattainment and maintenance areas shall be considered to be 1 single nonattainment and maintenance area for purposes of determining the geographic eligibility of volatile organic compound emission reduction credit trading and emission averaging under subrules (5) and (6) of this rule.~~

~~(8) The use of other criteria pollutant emission reduction credits or emission reductions for emission averaging shall only be allowed where at least 1 of the following criteria is satisfied:~~

~~(a) The emission reduction credits or emission reductions for emission averaging are proposed to be used in the same geographic area where the emission reduction credits or emission reductions for emission averaging were generated.~~

~~(b) The geographic area where the emission reduction credits or emission reductions for emission averaging are proposed to be used is an attainment area for the criteria pollutant.~~

~~(c) The geographic area where emission reduction credits or emission reductions for emission averaging are proposed to be used is a nonattainment or maintenance area for the criteria pollutant, and the area where the emission reduction credits or emission reductions for emission averaging were generated is an adjacent area that contributes to the relevant air quality problem in the proposed use area.~~

R 336.2212 **Rescinded.** ~~Emission reductions; credit life; air quality benefit contributions; discounts.~~

~~Rule 1212. (1) Emission reduction credits entered in the emission trading registry created pursuant to R 336.2215 may be used or traded for a period of 5 calendar years after the year of generation, subject to the ozone season restrictions specified in R 336.2205. Emission reduction credits not used within the credit life specified in this subrule shall be retired to provide an air quality benefit and shall not be eligible for use or trading under this rule.~~

~~(2) Emission reduction credits generated by emission reductions which are necessary to comply with a proposed applicable requirement and which occur after the date the applicable requirement is proposed and before final compliance dates specified by R 336.2208(2)(h) may be used or traded for a period of 5 calendar years after the year of generation or 1 calendar year after the effective date of final compliance, whichever occurs first.~~

~~(3) At the time of registration, each person who creates emission reductions to be used under this part shall contribute 10% of the emission reductions to the department to provide a net air quality benefit. This onetime 10% contribution shall be effective at the time the department issues a notice of completeness for the notice of emission reduction credit generation or the notice of emission averaging.~~

~~(4) Emission reduction credits which are in compliance with all eligibility requirements of this part and which were generated after January 1, 1991, and before the effective date of this part shall be discounted by 50% if entered into the emission trading registry. The discount shall be made in place of the 10% net air quality benefit contribution required under subrule (3) of this rule. The 50% discounted emission reduction credits shall be retired as an air quality benefit.~~

~~(5) Emission reduction credits for volatile organic compounds and oxides of nitrogen used to comply with a volatile organic compound or oxides of nitrogen ozone season emission limitation during subsequent ozone seasons shall be discounted by 10% per ozone season until the emission reduction credits expire.~~

R 336.2213 **Rescinded.** ~~Registration of emission averaging plan or emission reductions for generation of emission reduction credits to be used or traded.~~

~~Rule 1213. (1) A person applying to register an emission averaging plan or emission reductions to generate emission reduction credits shall provide, to the department, notice and certification of the emission averaging plan or the emission reductions being generated.~~

~~(2) For emission reductions generated between January 1, 1991, and March 16, 1996, the notice and certification required by subrule (1) of this rule shall be submitted by March 16, 1997.~~

~~(3) The notification required by subrules (1) and (2) of this rule shall include all of the following information:~~

~~(a) The name and location, by address and county, of the sources, processes, or process equipment that will participate in emission averaging or the name and location, by address and county, of the source, process, or process equipment at which emission reductions have been or will be made and where the records are or will be kept.~~

~~(b) The name, address, and telephone number of the responsible official providing notice and certification of the emission averaging plan or the emission reductions being generated.~~

~~(c) The rate of emission reductions, overages, and net emission reductions achieved by the emission averaging plan for emission averaging or the total emission reductions, in tons per year or tons per ozone season, by pollutant and attainment status for the pollutant, to be registered.~~

~~(d) An identification of the sources, processes, or process equipment included in an emission averaging plan or an identification of the source, process, or process equipment at which the emission reduction occurs to generate an emission reduction credit.~~

~~(e) A brief description of the method or methods used to reduce emissions.~~

~~(f) The effective date and duration of the emission averaging plan or the effective date that the emission reduction occurred or will occur and the duration of the emission reduction strategy.~~

~~(g) Calculations of either of the following, as applicable:~~

~~(i) For emission reductions that have already occurred, actual emissions after the emission reduction method has been implemented, which shall be calculated in a manner consistent with the method used to calculate the baseline.~~

~~(ii) For emission reductions that will occur, expected emissions after the proposed emission reduction method is implemented, which shall be calculated in a manner consistent with the method used to calculate the baseline.~~

~~(h) All of the following documentation shall be included for the emission monitoring and quantification protocol required by R 336.2209:~~

~~(i) An identification of all applicable emission monitoring and quantification protocols used for purposes of emission reduction credit generation and for purposes of determining compliance with applicable air quality requirements, if the protocols exist. The identification of the specific emission~~

~~monitoring and quantification protocol used to quantify emissions for mobile sources shall be provided where applicable.~~

~~(ii) A description of the emission monitoring and quantification protocols considered for use under this part, and an explanation of the rationale for using the chosen emission monitoring and quantification protocol.~~

~~(iii) Example calculations, including both of the following:~~

~~(A) Calculations of baseline emissions and emission reductions from the baseline.~~

~~(B) Calculations to substantiate the measured activity level during the baseline determination period and the period of emission reduction credit generation. Units of operation or activity level during both the baseline determination period and the period of emission reduction credit generation shall be appropriate for the specified emission monitoring and quantification protocol and shall be consistent with each other.~~

~~(iv) The location of all data, including test runs.~~

~~(v) An explanation of steps taken to address bias.~~

~~(vi) If use of an alternative emission monitoring and quantification protocol is proposed in place of an emission monitoring and quantification protocol specified by an applicable requirement, technical information to demonstrate that the proposed alternative method is at least as credible, accurate, workable, enforceable, and replicable as the method specified by the applicable requirement.~~

~~(4) The notice required under this rule shall be accompanied by a certification by the responsible official of all of the following:~~

~~(a) That, to the best of the responsible official's knowledge, the information contained in the notice is true, accurate, and complete.~~

~~(b) That the emission reductions generated are real, surplus, enforceable, permanent, and quantifiable.~~

~~(c) That the emission reduction strategy began on or before the period of emission reduction credit generation start date specified in a notice determined to be complete by the department, and that the emission reduction strategy will either continue through, or will terminate upon, the period of emission reduction credit end date specified in a notice determined to be complete by the department.~~

~~(d) That the emission reductions were not used elsewhere for emission averaging or as emission reduction credits.~~

~~(5) The notice and certification required under this rule shall be submitted to the department for a determination of completeness and shall be date stamped by the department upon receipt. Within 30 days of receipt of the notice and certification, the department shall make a determination and provide a written response to the person submitting the notice and certification as to the completeness of the submittal. A determination of completeness or incompleteness made by the department shall be considered a final agency decision subject to review by a court of competent jurisdiction under section 631 of Act No. 236 of the Public Acts of 1961, as amended, being §600.631 of the Michigan Compiled Laws. A determination of completeness does not constitute an approval by the department. If the notice and certification are determined to be complete, then the department shall, within 5 business days, enter the information required by R 336.2215 in the emission trading registry. Immediately upon entry in the emission trading registry, the information in the notice and certification shall be available to the public, except for information that is determined to be confidential under the provisions of section 5516 of Act No. 451 of the Public Acts of 1994, as amended, being §324.5516 of the Michigan Compiled Laws. If the notice and certification are determined by the department to be incomplete, then the proposed emission averaging plan is not valid or the emission reductions are not eligible to generate emission reduction credits. A notice of incompleteness shall not preclude or prejudice a person from submitting a corrected or revised notice and certification.~~

~~(6) The methods used, or operational changes made, to create an emission averaging plan or emission reductions for the generation of emission reduction credits for which a complete notice and certification is submitted to the department shall become legally enforceable operating requirements upon the beginning date of the emission averaging implementation period, or upon the start date of the period of emission reduction credit generation, specified in a notice determined to be complete by the department. The methods used and operational changes made to reduce emissions and the conditions and requirements for emission averaging or the generation of emission reduction credits shall continue to be legally enforceable operating requirements throughout the emission averaging implementation period or the period of emission reduction credit generation and shall be incorporated into an operating permit, permit to install, or permit to operate if required by the act, rules promulgated under the act, or the federal clean air act.~~

R 336.2214 **Rescinded**. ~~Registration of use or trading of emission reduction credits.~~

~~Rule 1214. (1) A person applying to use or trade emission reduction credits under the provisions of this part shall provide prior notice to the department.~~

~~(2) The notice to use emission reduction credits shall include all of the following information:~~

~~(a) The name and location, by address and county, of the source, process, or process equipment at which the emission reduction credits are proposed to be used.~~

~~(b) The name, address, and telephone number of the responsible official providing notice of the proposed use or trading of emission reduction credits.~~

~~(c) The number of emission reduction credits, in tons per year or tons per ozone season, by pollutant and attainment status for the pollutant, that are proposed to be used or traded.~~

~~(d) A description of the source, process, or process equipment at which the emission reduction credits are proposed to be used.~~

~~(e) An specific identification of the proposed use.~~

~~(f) An identification of all applicable requirements being complied with through the use of emission reduction credits and the emission monitoring and quantification protocols used to quantify emissions and to determine compliance with all applicable requirements.~~

~~(g) The effective dates of use of the emission reduction credits, and calculations demonstrating compliance through the use of emission reduction credits.~~

~~(3) The notice to trade emission reduction credits shall include all of the following information:~~

~~(a) The name and mailing address of the company that is proposing to trade the emission reduction credits.~~

~~(b) The name, address, and telephone number of the responsible official providing notice of the proposed trade of emission reduction credits.~~

~~(c) The name and mailing address of the company that is proposing to receive the emission reduction credits.~~

~~(d) The name, address, and telephone number of the contact person for the company that is proposing to receive the emission reduction credits.~~

~~(e) An identification of the registry series number corresponding to the emission reduction credits that are proposed to be traded.~~

~~(f) The number of emission reduction credits, by pollutant, in tons per year or tons per ozone season, that are proposed to be traded.~~

~~(4) Each of the notices required by subrules (2) and (3) of this rule shall be accompanied by a certification, by the responsible official, that the information contained in the notice is true, accurate, and complete. If notice to use emission reduction credits is being provided under subrule (2) of this rule, then a certification that the source, process, or process equipment shall be operated in compliance~~

~~with all applicable requirements and the conditions and requirements for the use of emission reduction credits under this part shall also be included. The certification required under this subrule shall not include a certification that the use of emission reduction credits is consistent with attainment area maintenance plans or nonattainment area reasonable further progress requirements or attainment demonstrations.~~

~~(5) The notices and certifications required by subrules (2), (3), and (4) of this rule shall be submitted to the department for a determination of completeness and shall be date stamped by the department upon receipt. Within 30 days of receipt of the notice and certification, the department shall make a determination, and provide a written response to the person submitting the notice and certification, as to the completeness of the submittal. A determination of completeness or incompleteness made by the department shall be considered a final agency decision subject to review by a court of competent jurisdiction under section 631 of Act No. 236 of the Public Acts of 1961, as amended, being §600.631 of the Michigan Compiled Laws. A determination of completeness does not constitute an approval by the department. If the notice is determined to be complete, the department shall, within 5 business days, enter the information required by R 336.2215 into the emission trading registry. The information in the notice shall be available to the public immediately upon entry in the emission trading registry, except for portions that are determined to be confidential under the provisions of section 5516 of the act. If the notice is determined by the department to be incomplete, then the proposed use or trade of emission reduction credits shall not occur. A notice of incompleteness shall not preclude or prejudice a person from submitting a corrected or revised notice and certification.~~

~~(6) The department shall not issue a notice of completeness for a proposed use of emission reduction credits that the department determines is inconsistent with R 336.2204(1). The department shall send a written response to the person who submitted the notice of use and certification determined to be inconsistent with R 336.2204(1) explaining why the determination was made. A determination of inconsistency with the provisions of R 336.2204(1) by the department shall not preclude or prejudice a person applying to use emission reduction credits from submitting a revised notice and certification to address the inconsistencies identified by the department.~~

~~(7) The methods used, and operational changes made, to accommodate the use of emission reduction credits for which a complete notice is submitted to the department under subrule (2) of this rule shall become legally enforceable operating requirements upon the effective date of the notice of completeness issued by the department, or the beginning date of the emission reduction credit use period, specified in a notice determined to be complete by the department. The conditions and requirements for the use of emission reduction credits shall continue to be legally enforceable operating requirements throughout the emission reduction credit use period and shall be incorporated into a permit to install or an operating permit if required by the act, rules promulgated under the act, or the federal clean air act.~~

~~(8) A person who uses emission reduction credits under this part shall include the price paid for the emission reduction credits in the notice required by R 336.2214(2) or by separate notice to the department within 7 business days of the use.~~

~~(9) A person who has registered the use of emission reduction credits with the department shall be allowed a period of time, not to exceed 60 days, commencing with the end of the use period specified in the notice of use to amend the notice of use and submit a notice and certification under R 336.2213 to register any unused emission reduction credits in excess of the quantity needed for the uses specified in the original notice of use.~~

R 336.2215 **Rescinded.** ~~Emission trading registry.~~

~~Rule 1215. (1) The department shall establish and maintain a publicly available emission trading registry for all of the following purposes:~~

~~(a) Registering emission averaging plans and emission reductions to generate emission reduction credits.~~

~~(b) Recording and tracking emission averaging and the use and trading of emission reduction credits.~~

~~(c) Registering emission reductions and emission reduction credits contributed to the state for retirement as an air quality benefit under R 336.2212(3) and R 336.2216(3).~~

~~(2) The emission trading registry shall contain the information required by R 336.2213(3) and R 336.2214(2) and (3), and all of the following information:~~

~~(a) The effective date and the life of the emission reduction credits that have been or will be generated.~~

~~(b) The name and location, by address and county, of the sources, processes, or process equipment included in an emission averaging plan, the magnitude of emission overages and reductions at each of the sources, processes, or process equipment, and the net air quality benefit contribution.~~

~~(3) The emission trading registry shall be continually updated by the department.~~

~~(4) The department shall make program activity information publicly available through continuous updates to an emission trading registry.~~

~~(5) The responsible official who certified the generation, use, or trade of emission reduction credits shall have 5 business days after the day of posting on the emission trading registry to notify the department of any department data entry errors and necessary corrections to the information posted on the emission trading registry. The department shall promptly correct any data entry errors on the emission trading registry.~~

R 336.2216 **Rescinded.** ~~Enforcement.~~

~~Rule 1216. (1) Notwithstanding another person's liability, negligence, or false representation, a person who owns or operates a source, process, or process equipment and who participates in emission averaging or the generation, use, or trading of emission reduction credits under this part shall be solely responsible to ensure that any affected source, process, or process equipment under his or her ownership or control is in compliance with all applicable emission standards and limitations.~~

~~(2) A person who, without being notified by the department, discovers and provides a written notice of insufficient reductions to the department stating that the overall emission reductions achieved by the emission averaging plan certified by the person or the emission reduction credits generated and registered, used, or traded by the person are not real, surplus, enforceable, permanent, and quantifiable shall be provided a reconciliation period of not more than 30 days, if all of the following conditions are met:~~

~~(a) The circumstances causing the emission reductions not to be real, surplus, enforceable, permanent, or quantifiable have not occurred before.~~

~~(b) The notice of insufficient reductions is provided to the department within 30 days of the discovery that the emission reductions are not real, surplus, enforceable, permanent, or quantifiable.~~

~~(c) The notice of insufficient reductions shall include all of the following information:~~

~~(i) A detailed description of how, and the date when, the insufficient reductions were discovered.~~

~~(ii) An explanation of the cause of the insufficient reductions.~~

~~(iii) A statement of the necessary corrective actions taken or to be taken and the time when the actions were completed or a schedule describing when the actions will be taken and completed.~~

~~(iv) A revised notice and certification of emission averaging or emission reduction credit generation.~~

~~(v) Certification by a responsible official that, to the best of the responsible official's knowledge, the information in the notice of insufficient reductions is true, accurate, and complete.~~

~~(d) Upon submitting the notice of insufficient reductions, the person submitting the notice shall do 1 of the following, as applicable:~~

(i) If an emission averaging plan has been implemented, then the person submitting the notice shall, within 30 days, implement and register emission reductions or obtain emission reduction credits sufficient to compensate for the rate of emission reductions or equivalent emission reduction credits that were not real, surplus, enforceable, permanent, and quantifiable.

(ii) If an emission averaging plan has been registered but has not been implemented, then the person submitting the notice shall, concurrent with the submittal of the notice of insufficient reductions, submit a revised notice of emission averaging or written request for the department to withdraw the emission averaging plan from the emission trading registry.

(iii) If emission reduction credits were or are being used or traded, then the person submitting the notice shall, within 30 days, either implement and register emission reductions or obtain emission reduction credits sufficient to compensate for the number of emission reduction credits that were not real, surplus, enforceable, permanent, and quantifiable. Reconciliation of emission reduction credits shall be on the same basis, either tons per year or tons per ozone season, as credits found not to be real, surplus, enforceable, permanent, and quantifiable.

(iv) If emission reductions have been registered but the associated emission reduction credits have not been used or traded, then the person submitting the notice shall, concurrent with the submittal of the notice of insufficient reductions, submit a revised notice of emission reduction credit generation or written request for the department to withdraw the emission reduction credits from the emission trading registry.

(3) If the department finds, without being provided a notice under subrule (2) of this rule, that a person has registered emission reductions for emission averaging or for the generation of emission reduction credits that are not real, surplus, enforceable, permanent, and quantifiable and the emission reductions are being or have been used for emission averaging or the associated emission reduction credits have been or are being used or traded, then the person who generated and registered the insufficient emission reductions shall generate, or obtain, and donate emission reduction credits to the department in an amount equal to treble the number of emission reductions or emission reduction credits that were not real, surplus, enforceable, permanent, and quantifiable. Reconciliation of emission reduction credits shall be on the same basis, either tons per year or tons per ozone season, as credits found not to be real, surplus, enforceable, permanent, and quantifiable. Emission reduction credits donated to the department under this subrule shall be retired to ensure realization of an air quality benefit and maintenance and attainment of national ambient air quality standards. A donation of emission reduction credits under this subrule shall not be considered to be a civil or criminal penalty. In addition to providing a donation under this part, a person may be subject to civil and criminal enforcement actions, fines, and imprisonment as provided under the act.

(4) A person who is granted a reconciliation period under subrule (2) of this rule and who complies with the requirements of subrule (2) of this rule shall be considered to be in compliance with R 336.2208(1)(c).

(5) Emission reduction credits shall be held before being used or traded. A person who fails to hold sufficient emission reduction credits to maintain compliance with the applicable requirement or requirements identified in an applicable notice of emission reduction credit use which has been determined to be complete by the department is in violation of this part.

(6) If the department determines that a person has violated the provisions of the act or this part, then the department may take appropriate enforcement action as provided under the act and this part. In an enforcement action, the department shall provide reasonable notice of the facts that constitute the alleged violation. In an enforcement proceeding, a person who generates and registers emission reductions shall have the burden of proof that the emission reductions generated and registered are real, surplus, enforceable, permanent, and quantifiable. A person who engages in emission averaging or who

~~uses emission reduction credits shall have the burden of proof of due diligence to comply with applicable emission standards or limitations and this part.~~

R 336.2217 **Rescinded.** ~~Program evaluations and individual audits.~~

~~Rule 1217. (1) The department shall conduct, or cause to be conducted, an evaluation of the emission trading program established under this part. The evaluation shall be conducted every 3 years, or more frequently if deemed necessary by the department, to make all of the following emission trading program assessments:~~

~~(a) Whether the program is consistent with the maintenance of national ambient air quality standards and has resulted in emission reductions consistent with reasonable further progress towards attainment and maintenance of national ambient air quality standards.~~

~~(b) Whether requirements for monitoring, recordkeeping, reporting, and enforcement have resulted in a sufficiently high level of compliance.~~

~~(c) Whether the program has caused any localized adverse effects to the public health, safety, or welfare or to the environment. The assessment shall include an analysis of the effects of emission trading on air toxic emissions.~~

~~(d) Whether the program is achieving reductions across a spectrum of sources, including area and mobile sources.~~

~~(e) Whether provisions for conducting audits of emission averaging plans and emission reduction credit transactions have resulted in a sufficient number of audits being conducted across a spectrum of sources.~~

~~(2) The department shall prepare a report on the evaluation of the program. The department shall seek public input on the findings contained in the evaluation report and shall provide for the public notice of the findings, a public comment period on the findings, and an opportunity for a public hearing on the findings contained in the report.~~

~~(3) If, after an evaluation of the program, the department determines that it is necessary to make program modifications, then the department, within 6 months of completion of the evaluation, shall, where appropriate, prepare a program revision for submittal to the administrator of the United States environmental protection agency as a revision to the state implementation plan.~~

~~(4) The department may conduct audits of individual transactions that take place under this part to determine compliance with all applicable requirements. The audits may include any of the following:~~

~~(a) A review of the protocols used to certify and provide notice of emission averaging and emission reduction credit generation.~~

~~(b) A compliance assessment of the sources, processes, or process equipment which is engaged in emission averaging or which has generated, registered, used, or traded emission reduction credits.~~

~~(c) A review of the methods, procedures, determinations, and calculations used to monitor, record, quantify, and certify emissions, emission reductions, emission averaging, and the generation and use of emission reduction credits.~~

~~(5) If, after an audit of a source, process, process equipment, emission averaging, or the use or trading of emission reduction credits under this part, the department determines that all applicable requirements have not been complied with, then the department may, after reasonable notice, take appropriate action as provided under the act and this part.~~

R 336.2218 **Rescinded.** ~~Interstate trading.~~

~~Rule 1218. (1) Nothing in this rule shall be construed to prohibit or restrict interstate trading of volatile organic compounds emission reduction credits or criteria pollutants emission reduction credits, except ozone, in a manner consistent with the act, rules promulgated under the act, and any interstate,~~

~~regional, or national air pollution control strategy implemented under, or to meet the requirements of, the federal clean air act.~~

~~(2) Emission reduction credits which were generated in a state other than Michigan, but which are proposed to be used in the state of Michigan, shall be used in a manner consistent with this part.~~

~~(3) Except as provided under subrule (6) of this rule, the department shall enter into a memorandum of understanding with another state that addresses all of the following key areas before allowing, in the state of Michigan, the use of emission reduction credits which were generated in the other state:~~

~~(a) The emission reduction credit generation system.~~

~~(b) The sharing of required notices and a compatible tracking system.~~

~~(c) Appropriate geographic restrictions.~~

~~(d) The eligibility of emission reduction credits for use.~~

~~(e) Acceptable emission reduction credit generation and use activities.~~

~~(f) Record retention requirements.~~

~~(g) Consistent treatment of emission monitoring and quantification protocols for purposes of emission reduction credit generation and use.~~

~~(h) Consistency in the determination of the baseline from which emission reduction credits are generated.~~

~~(i) Temporal requirements and definitions.~~

~~(4) The interstate memorandum of understanding required by subrule (3) of this rule shall require each participating state to enforce emission limitations under their respective jurisdictions. In addition, the memorandum shall contain a procedure or procedures for incorporating emission shifts caused by trading into each state's attainment demonstrations, maintenance plans, and reasonable further progress plans, as applicable.~~

~~(5) The interstate memorandum of understanding required by subrule (3) of this rule shall make a determination regarding which state's laws determine whether an emission reduction credit is valid.~~

~~(6) The trading of emission reduction credits under an emission cap or budget established for a region or as part of a national air pollution control strategy shall not require a memorandum of understanding as specified under subrule (3) of this rule.~~

NOTICE OF PUBLIC HEARING

SOAHR 2007-005
NOTICE OF PUBLIC HEARING
DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

The Michigan Department of Environmental Quality (DEQ), Air Quality Division, will conduct a public hearing on proposed administrative rules promulgated pursuant to Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451); R 336.2201 to R 336.2218. The DEQ is proposing to rescind Part 12, Emission Averaging and Emission Reduction Credit Trading, due to the lack of participation by the regulated community and lack of sufficient resources to maintain the voluntary trading program.

The public hearing will be held on July 19, 2007, at 10:00 a.m., in the Brake Conference Room, Constitution Hall, Atrium South, 525 West Allegan Street, Lansing, Michigan.

Copies of the proposed rules (SOAHR 2007-005EQ) can be downloaded from the Internet at: http://www.michigan.gov/deqair. These rules can also be downloaded from the Internet through the State Office of Administrative Hearings and Rules at http://www.michigan.gov/orr. Copies of the rules may also be obtained by contacting the Lansing office at:

Air Quality Division
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48909-7760
Phone: 517-373-7045
Fax: 517-241-7499
E-Mail: halbeism@Michigan.gov

All interested persons are invited to attend and present their views. It is requested that all statements be submitted in writing for the hearing record. Anyone unable to attend may submit comments in writing to the address above. Written comments must be received by 5:00 p.m. on July 19, 2007.

Persons needing accommodations for effective participation in the meeting should contact the Air Quality Division at 517-373-7045 one week in advance to request mobility, visual, hearing, or other assistance.

This notice of public hearing is given in accordance with Sections 41 and 42 of Michigan's Administrative Procedures Act, 1969 PA 306, as amended, being Sections 24.241 and 24.242 of the Michigan Compiled Laws. Administration of the rules is by authority conferred on the Director of the DEQ by Sections 5503 and 5512 of Act 451, being Sections 324.5503 and 324.5512 of the Michigan Compiled Laws, and Executive Order 1995-18. These rules will become effective immediately after filing with the Secretary of State.

PROPOSED ADMINISTRATIVE RULES

SOAHR 2007-006

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

AIR POLLUTION CONTROL

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

Draft 4/12/2007

(By authority conferred on the director of the department of environmental quality by sections 5503 and 5512 of 1994 PA 451, MCL 324.5503 and 324.5512, and Executive Reorganization Order No. 1995-18, MCL 324.99903)

R 336.1660 and R 336.1661 of the Michigan Administrative Code are amended as follows:

PART 6. EMISSION LIMITATIONS AND PROHIBITIONS--
EXISTING SOURCES OF VOLATILE ORGANIC COMPOUND EMISSIONS

R 336.1660 Standards for volatile organic compounds emissions from consumer products.

Rule 660. (1) The provisions in the ozone transport commission's (OTC), "Model Rule for Consumer Products," dated ~~March 6, 2001,~~ **September 13, 2006,** are adopted by reference in this rule, with the following exceptions:

(a) Section (8), variances.

(b) Section (10), severability.

(c) Section (11)(f), violations.

(d) Where the date "January 1, 2005" appears in the following sections, the department shall instead recognize January ~~1~~ **29**, 2007:

(i) Section (1), applicability.

(ii) Section (3)(a), **table,** ~~(e)(1)(i),~~ **(f)(1)(i),** and ~~(f)(3),~~ **(g)(3)** standards.

(iii) Section (6)(d)(1), administrative requirements.

~~(e) In section 6(d)(1)(ii)(a) the wording "exceeds the application1;" shall be changed to "exceeds the applicable volatile organic standard."~~

~~(f)~~ **(e) Where the date "2005" appears in section 7(d)(2) and (3), the department shall instead recognize 2007.** Where the date "March 1, 2006" appears in section 7(d)(2) and (3), the department shall instead recognize March 1, 2008. ~~Where the date "2005" appears in Section 7(d)(3), the department shall instead recognize 2007.~~

(2) Copies of the ozone transport commission's, "Model Rule for Consumer Products," dated ~~March 6, 2001,~~ **September 13, 2006,** may be obtained without charge from the Department of Environmental Quality, Air Quality Division, 525 West Allegan Street, P. O. Box 30260, Lansing, Michigan 48909-7760. A copy may also be obtained without charge from the Ozone Transport Commission, Hall of the States, 444 North Capitol Street, Suite 638, Washington, DC 20001, or on the ozone transport commission internet web site at www.otcair.org.

R 336.1661 Definitions for consumer products.

Rule 661. As used in R 336.1660:

(a) The "OTC state" means state of Michigan.

(b) "Volatile organic compound" or "VOC" means a compound **as defined in 40 C.F.R. §51.100 (2006). For the purpose of clarifying the definition, the provisions of 40 C.F.R. §51.100 (2006) are adopted by reference in these rules. Copies of 40 C.F.R. §51.100 are available for inspection and purchase at the Department of Environmental Quality, Air Quality Division, 525 West Allegan Street, P.O. Box 30260, Lansing, Michigan 48909-7760, at a cost at the time of adoption of these rules of $55.00. Copies may be obtained from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, at a cost at the time of adoption of these rules of $45.00, or on the United States government printing office internet web site at www.gpoaccess.gov.** ~~containing at least 1 atom of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, and excluding all of the following:~~

~~(i) Methane.~~

~~(ii) Methylene chloride (dichloromethane).~~

~~(iii) 1,1,1-trichloroethane (methyl chloroform).~~

~~(iv) Trichlorofluoromethane (CFC-11).~~

~~(v) Dichlorodifluoromethane (CFC-12).~~

~~(vi) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113).~~

~~(vii) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114).~~

~~(viii) Chloropentafluoroethane (CFC-115).~~

~~(ix) Chlorodifluoromethane (HCFC-22).~~

~~(x) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123).~~

~~(xi) 1,1-dichloro-1-fluoroethane (HCFC-141b).~~

~~(xii) 1-chloro-1,1-difluoroethane (HCFC-142b).~~

~~(xiii) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124).~~

~~(xiv) Trifluoromethane (HFC-23).~~

~~(xv) 1,1,2,2-tetrafluoroethane (HFC-134).~~

~~(xvi) 1,1,1,2-tetrafluoroethane (HFC-134a).~~

~~(xvii) Pentafluoroethane (HFC-125).~~

~~(xviii) 1,1,1-trifluoroethane (HFC-143a).~~

~~(xix) 1,1-difluoroethane (HFC-152a).~~

~~(xx) Cyclic, branched, or linear completely methylated siloxanes.~~

~~(xxi) The following classes of perfluorocarbons:~~

~~(A) Cyclic, branched, or linear, completely fluorinated alkanes.~~

~~(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations.~~

~~(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations.~~

~~(D) Sulfur-containing perfluorocarbons with no unsaturations and with the sulfur bonds to carbon and fluorine.~~

~~(E) The following low-reactive organic compounds which have been exempted by the U.S. environmental protection agency:~~
~~(1) Acetone.~~
~~(2) Ethane.~~
~~(3) Methyl acetate.~~
~~(4) Parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene).~~
~~(5) Perchloroethylene (tetrachloroethylene).~~

NOTICE OF PUBLIC HEARING

SOAHR 2007-006
NOTICE OF PUBLIC HEARING
DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

The Michigan Department of Environmental Quality (DEQ), Air Quality Division, will conduct a public hearing on proposed administrative rules promulgated pursuant to Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451); R 336.1660 and R 336.1661. The DEQ is proposing to amend the Consumer Product Rules to reduce volatile organic compound content from additional consumer and commercial products manufactured, sold, or used in the state of Michigan. The proposed rules will adopt by reference the amended Ozone Transport Commission model rule published September 13, 2006.

The public hearing will be held on July 19, 2007, at 10:00 a.m., in the Brake Conference Room, Constitution Hall, Atrium South, 525 West Allegan Street, Lansing, Michigan.

Copies of the proposed rules (SOAHR 2007-006EQ) can be downloaded from the Internet at: http://www.michigan.gov/deqair. These rules can also be downloaded from the Internet through the State Office of Administrative Hearings and Rules at http://www.michigan.gov/orr. Copies of the rules may also be obtained by contacting the Lansing office at:

Air Quality Division
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48909-7760
Phone: 517-373-7045
Fax: 517-241-7499
E-Mail: halbeism@Michigan.gov

All interested persons are invited to attend and present their views. It is requested that all statements be submitted in writing for the hearing record. Anyone unable to attend may submit comments in writing to the address above. Written comments must be received by 5:00 p.m. on July 19, 2007.

Persons needing accommodations for effective participation in the meeting should contact the Air Quality Division at 517-373-7045 one week in advance to request mobility, visual, hearing, or other assistance.

This notice of public hearing is given in accordance with Sections 41 and 42 of Michigan's Administrative Procedures Act, 1969 PA 306, as amended, being Sections 24.241 and 24.242 of the Michigan Compiled Laws. Administration of the rules is by authority conferred on the Director of the DEQ by Sections 5503 and 5512 of Act 451, being Sections 324.5503 and 324.5512 of the Michigan Compiled Laws, and Executive Order 1995-18. These rules will become effective immediately after filing with the Secretary of State.

PROPOSED ADMINISTRATIVE RULES

SOAHR 2007-013

DEPARTMENT OF LABOR & ECONOMIC GROWTH

DIRECTOR'S OFFICE

BOARD OF REAL ESTATE APPRAISERS

GENERAL RULES

Filed with the Secretary of State on

These rules become effective on January 1, 2008.

(By authority conferred on the director of the department of labor and economic growth by sections 205, 308, 2601, 2605, and 2617 of 1980 PA 299, MCL 339.205, 339.308, 339.2601, 339.2605, and 339.2607, and Executive Reorganization Order Nos. 1996-2, MCL 445.2001, and 2003-18, MCL 445.2011)

Draft 5/4/2007

R 339.23101, R 339.23201, R 339.23203, R 339.23301, R 339.23303, R 339.23307, R 339.23309, R 339.23311, R 339.23315, R 339.23317, R 339.23319, R 339.23320, R 339.23321, R 339.23326 and R 339.23403 of the Michigan Administrative Code are amended, and R 339.339.23102 and R 339.23316 are added as follows:

PART 1. GENERAL PROVISIONS

R 339.23101 Definitions.

Rule 101. (1) As used in these rules:

(a) "Act" means 1980 PA 299, MCL 339.101 et seq., and known as the occupational code.

(b) "Appraiser Qualifications Board Criteria" or "AQB Criteria" means the standards for education, experience and examination to become a limited appraiser, state licensed appraiser, certified residential appraiser, certified general appraiser or an instructor of the Uniform Standards of Professional Appraisal Practice (USPAP) pursuant to MCL 339.2601(b). A copy of the criteria is available for download at no charge at www.appraisalfoundation.org. The criteria can also be viewed at the department of labor and economic growth's bureau of commercial services, 2501 Woodlake Circle, Okemos, Michigan 48864.

(~~b~~ **c**) "Board" means the board of real estate appraisers.

(~~c~~ **d**) "Licensee" means an individual who is licensed under article 26 of the act, including a limited real estate appraiser, a state-licensed real estate appraiser, a certified residential real estate appraiser, or a certified general real estate appraiser.

(~~d~~ **e**) "Market analysis as performed by a real estate licensee" means the activity defined in section 2601(a)(i) and (ii) of the act, and means analysis solely for the purpose of establishing potential sale,

purchase, or listing price of real property or the rental rate of real property and is not for the purpose of evaluating a property for mortgage lenders in the primary or secondary mortgage market.

~~(e) "Real estate consulting", as used in sections 2613, 2614, and 2615 of the act, is that function or functions described in standards 4 and 5 of the uniform standards of the uniform standards of professional appraisal practice.~~

(f) "Transaction value" means any of the following:

(i) For loans or other extensions of credit, the amount of the loan or the extension of credit.

(ii) For sales, leases, purchases, and investments, or in exchanges of real property, the market value of the real property interest involved.

(iii) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(g) "Uniform standards of professional appraisal practice" or "USPAP" means the uniform standards of professional appraisal practice, published by the appraisal foundation, effective **January 1, 2008** ~~July 1, 2006~~. Copies of the edition are available at a cost at the time of adoption of these rules of $30.00 plus $8.50 for shipping from the Appraisal Foundation, 1155 15th Street NW, Suite 1111, Washington DC, 20005. Mail Orders: P.O. Box 381, Annapolis Junction, MD 20101-0381, phone toll-free 800/805-7857 or 240/864-0100. Copies of the current USPAP and previous editions may be downloaded without charge from the following Internet address: www.appraisalfoundation.org. The current USPAP and previous editions may be reviewed or purchased from the department of labor and economic growth by mailing to the Bureau of Commercial Services, 2501 Woodlake Circle, Okemos Michigan 48864, mailing address, P.O. Box 30018, Lansing MI 48909, phone: 517/241-9201, at a cost as of the time of adoption of these rules of $50.00 plus $11.00 shipping and handling costs.

(2) Terms defined in articles 1 to 6 and 26 of the act have the same meanings when used in these rules.

R 339.23102 AQB Criteria.

Rule 102. The Board adopts the AQB criteria for education, experience, examination and instructors of USPAP pursuant to MCL 339.2601(b).

PART 2. LICENSING

R 339.23201 Acceptable appraisal experience generally.

Rule 201. (1) Credit for appraisal experience shall be based on the actual performance of appraisals. The department shall not grant experience credit to an applicant solely on the basis of total hours of employment in an appraisal firm or other entity. The actual performance of appraisals includes time spent in such professional activities as personally inspecting real property, conducting research and developing materials supporting the appraisal, preparing the content of appraisal reports, and presenting the appraisal to the client. It does not include time spent in the solicitation of business, negotiation and development of client agreements, clerical tasks, or business accounting and collections, even though such tasks may be appropriately billed to a client as a necessary part of performing the appraisal.

(2) Credit shall not be given for performing more than 40 hours per week of professional experience unless specific experience, which is verified by a supervisor, can be provided to demonstrate that an individual worked more hours in that week. However, experience in excess of 40 hours a week that is obtained before January 1, 1992, may be verified by a supervisor's affidavit.

(3) Hours credited per appraisal shall be credited based upon the number of hours spent on each assignment, not to exceed the number of hours in the following table: Requests for exceptions shall be approved or denied by the department.

PROPERTY TYPES	MAX. ALLOWABLE HOURS
SINGLE FAMILY RESIDENTIAL	8
RESIDENTIAL MULTI FAMILY (2 to 4 UNITS)	20
RESIDENTIAL MULTI FAMILY (5 to 12 UNITS)	36
RESIDENTIAL MULTI FAMILY (13 OR MORE UNITS)	40
RESIDENTIAL LOT	6
SUBDIVISIONS	40
RURAL RESIDENTIAL LAND (IMPROVED 20 ACRES OR LESS)	16
RURAL RESIDENTIAL LAND (VACANT 20 ACRES OR LESS)	12
AGRICULTURAL FARM OR FOREST LAND	40
INDUSTRIAL (INDUSTRIAL PARK, BUSINESS CAMPUS, WAREHOUSING, MANUFACTURING PLANT, ETC.)	40
INDUSTRIAL PARK OR BUSINESS CAMPUS LAND (VACANT)	24
MULTI FAMILY LAND (VACANT)	24
COMMERCIAL PROPERTIES: SINGLE TENANT	40
MULTI TENANT(IMPROVED OFFICE BLDG, RETAIL STORE, RESTAURANT, SERVICE STATION, BANK, DAY CARE CENTER, NURSING HOME, ETC.)	80
COMMERCIAL LAND (VACANT)	24

(4) Qualifying experience in performing real estate appraisals on or after January 1, 1992, shall be obtained while the individual is licensed as a limited real estate appraiser, certified residential real estate appraiser, or state licensed real estate appraiser or is properly exempt from licensing.

(5) A limited real estate appraiser shall be subject to direct supervision by a supervising appraiser who shall be ~~state licensed or~~ **a** certified ~~in good standing~~ **residential appraiser or a certified general appraiser**. The supervising appraiser shall be responsible for the training and direct supervision of the limited real estate appraiser by accepting responsibility for the appraisal report by signing and certifying that the report is in compliance with the uniform standards of professional appraisal practice by doing both of the following:

(a) Reviewing the ~~appraiser trainee~~ **limited appraiser's** appraisal report or reports.

(b) Personally inspecting each appraised property with the limited real estate appraiser until the supervising appraiser determines the limited appraiser is competent in accordance with the competency provision of the uniform standards of professional appraisal practice (USPAP) for the property type. Separate logs shall be maintained for each supervising appraiser, and each log shall contain the signature, the license or certification number, and the level of licensure of the supervising appraiser.

R 339.23203 Appraisal experience; satisfactory evidence.

Rule 203. (1) For an applicant's experience hours to be accepted, the experience shall be in compliance with both of the following requirements, as applicable:

(a) Appraisal experience shall be demonstrated by copies of reports and file memoranda. A detailed log which includes the date, property address, property type, and a clear indication of the time devoted to each appraisal shall be submitted to the department. The information in the log shall be capable of being documented by work samples, and shall include an affidavit of a supervisor, if requested by the department. If a supervisor is not available, if the applicant was the supervisor, or if the applicant was self-employed, then the department may require an affidavit from a professional colleague or from an institution for whom the work was performed to support the documentation of the applicant.

(b) **An affidavit referenced in subrule (1)(a) of this rule may be utilized only for the purpose of documenting the reasons for appraisal experience to exceed more than 40 hours per week, pursuant to R 339.23201(2).**

~~If documentation under subdivision (a) of this subrule is not available and the appraisal experience was obtained before January 1, 1992, the hours of supervised experience shall be verified by an affidavit from the applicant's supervisor. The affidavit shall include, but not be limited to, all of the following information:~~

~~(i) A statement that the signer has personal knowledge of the applicant's work.~~

~~(ii) The applicant's employment history with that supervisor or employer.~~

~~(iii) An explanation regarding why the actual log and work reports are not available.~~

~~(iv) The number and types of appraisal reports as reported on the license application and a statement that the number of hours of appraisal experience are accurately represented.~~

~~(v) A statement that the appraisal reports complied with the uniform standards of professional appraisal practice or the equivalent appraisal standards that were in effect at the time the appraisals were performed.~~

~~(vi) The signature of the individual who completed the affidavit and the individual's license number and type of license, if applicable, or a statement that the signer is exempt from licensure and the reason for the exemption.~~

(2) An applicant for a license shall demonstrate experience gained in each of the following areas of the appraisal process:

(a) Defining the appraisal problem.

(b) Gathering and analyzing data.

(c) Applying appropriate value approaches and methodology.

(d) Arriving at an opinion of value.

(e) Reporting the opinion of value.

(3) Documents that support the information that is contained in an application, an applicant's experience log, or an affidavit **as required in R 339.23201(2)** shall be maintained for not less than 5 years from the date of application.

PART 3. APPRAISER EDUCATION

R 339.23301 Definitions.

Rule 301. As used in this part:

(a) "Continuing education course" means a course that ~~is represented as fulfilling the requirements of section 2627 of the act~~ **complies with the AQB criteria for continuing education courses and is approved by the department**.

(b) "Coordinator" means an individual who assumes, on behalf of a course sponsor, the responsibility pursuant to these rules for offering courses relating to the activities of real estate appraisers.

(c) "Instructor" means an individual who is deemed qualified by the sponsor to instruct students in prelicensure or continuing education courses and who provides instruction directly and interactively in contact with students. An instructor may utilize guest speakers, but shall bear ultimate responsibility to the sponsor for the quality of information imparted to students.

(d) "Prelicensure course" means a course that ~~is represented as fulfilling, in whole or in part, the requirements of section 2611, 2613(a), 2614(b), or 2615(b) of the act~~ **complies with the AQB criteria for prelicensure education courses and is approved by the department**.

(e) "Sponsor" means an entity which meets the requirements of section 2617(2) of the act and which offers or proposes to offer either prelicensure appraiser education or continuing education.

R 339.23303 Education; submission of documentation by license applicants.

Rule 303. (1) In submitting documentation of prelicensure education obtained before the effective date of the act or from course sponsors that are not approved pursuant to these rules, the applicant shall show that the course was designed to teach individuals to perform appraisals or to augment a basic knowledge of appraisal with general information that the instructor then relates to the performance of appraisals.

(2) General educational courses, such as business, economics, statistics, or law, or general courses in real estate or real estate law will not be considered equivalent to approved prelicensure education unless a relationship to appraisal is shown in the course description, syllabus, or curriculum outline to the extent that not fewer than 15 classroom hours were specifically related to appraisal. Classroom hours of credit shall only be granted for hours that are specifically related to appraisal.

(3) An applicant's submission of documentation of prelicensure education ~~or a submission of documentation of continuing education by a licensee~~ shall include all of the following information:

(a) The date and place the course was taken.

(b) The name of the sponsor and the sponsor's current address ~~or~~ **and** telephone number if available.

(c) A copy of the course outline, syllabus, detailed curriculum, or similar information.

(d) A copy of the certificate of completion.

(e) The number of classroom hours spent in the course. To have the ~~continuing~~ education hours approved by the department, continuing education course sponsors utilizing distance-learning systems shall have an acceptable method of ensuring that the student achieves an equivalent to classroom hours.

(4) In submitting documentation of education from institutions of higher education that are authorized to grant degrees which confer credit hours rather than classroom hours, 1 credit hour shall be equivalent to10 classroom hours of actual instruction for term credits and 15 classroom hours of instruction for semester credits.

(5) Documentation to support information on the application for course approval shall be maintained for not less than ~~5~~ **6** years from the date of the application.

(6) To assist applicants, the department shall maintain a list of courses that are acceptable to the department.

R 339.23307 Conduct of courses; changes in courses.

Rule 307. (1) A course sponsor shall comply with all of the following requirements:

(a) A course shall not be represented to licensees or to the public as meeting the requirements of the act and these rules until it has been approved by the department.

(b) Solicitation of organizational membership, employment, or business-related products and services is prohibited during qualifying course classroom hours.

(c) A sponsor shall appoint an individual as coordinator for the sponsor's courses. The coordinator shall be responsible for supervising the program of courses and assuring compliance with the code and these rules. The coordinator need not be a licensee.

(d) An instructor who meets the requirements of R 339.23309 (3) and (4) shall teach the course.

(e) Each student shall be provided with a written syllabus that contains, at a minimum, all of the following information:

(i) The course title.

(ii) The times and dates of the course offering.

(iii) The name, business address, and telephone number of the course coordinator and the name of the instructor.

(iv) A detailed outline of the subject matter to be covered and the estimated time to be devoted to each subject.

(f) A course shall not be credited for more than 10 classroom hours of instruction in 1 calendar day. Calculations of classroom hours for a course shall not include any of the following:

(i) Meals.

(ii) Breaks.

(iii) Registration.

(iv) Required reading.

(v) Outside assignments.

(g) Each course shall reflect the most current version of state and federal laws and regulations.

(h) A sponsor shall permit the department to review a course at any time or to inspect the records of a course sponsor during normal business hours.

(i) A sponsor whose programs are transferred to another entity shall arrange for student records to be maintained permanently by the successor entity. The successor entity shall assure that course completion information is available to students who need to verify their education.

(2) The department shall accept or reject a change in, or addition to, the information provided to the department on an original application. The department may determine that a proposed change cannot be made without the submission of additional supporting documentation or that the extent or number of changes requested require the sponsor to complete a new application for approval.

(3) The department may request a sponsor to provide any additional supporting documentation that is necessary for the department to approve the course.

(4) Department approved courses shall expire 3 years from the date of the course approval, at which time the course approval shall be subject to renewal. A sponsor shall notify the department of its intent to renew or discontinue previously approved course or courses by satisfactorily completing and submitting a course renewal form provided by the department. Course renewal forms shall be received by the department at least 60 days before the expiration date. If a satisfactorily completed renewal form

is not received by the department by the expiration date, the course shall cease to be departmentally approved beyond the expiration date. Course renewal forms are not valid and shall not be accepted by the department after the expiration date. Sponsors requesting approval for course renewal after the expiration date shall complete and submit an application for original course approval.

(5) A proprietary real estate appraiser sponsor licensed under 1943 PA 148 shall continuously comply with the act.

(6) ~~(5)~~ If a sponsor desires to change a course's content/curriculum and/or hours of credit, the sponsor shall reapply for departmental approval of the changes to the course by completing an application for course approval, obtained from the department. The department shall notify the sponsor whether the proposed course change is approved or not. The sponsor shall not offer the course with the proposed changes without departmental approval.

R 339.23309 Sponsors; duties; instructors.

Rule 309. (1) Each sponsor shall be responsible for all of the following:

(a) Compliance with all laws and rules relating to appraiser education.

(b) Providing students with current and accurate information.

(c) Maintaining an atmosphere that is conducive to learning in the classroom.

(d) Assuring and certifying the attendance of students who are enrolled in courses.

(e) Providing assistance to students and responding to questions relating to course materials.

(f) Supervising all guest lecturers and relating all information that is presented to the practice of real estate appraisal.

(2) Distance education sponsors shall ensure that all of the following qualifications for their courses are complied with:

(a) The course shall be presented with an instructor available to answer questions, provide information, and monitor student attendance.

(b) The course meets 1 of the following criteria:

(i) The course has been presented by an accredited college or university (through the commission on colleges or a regional accreditation association) that offers distance education programs in other disciplines.

(ii) The course has received approval of the international distance education certification center (IDECC) for the course design and delivery mechanism and either of the following:

(A) The approval of the appraiser qualification board through the AQB course approval program.

(B) The approval of the licensing or certifying jurisdiction where the course is being offered for the content of the course.

(C) The course meets all of the following requirements:

(i) The course is equivalent to 2 classroom hours.

(ii) A student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation. If a written examination is not required for accreditation, a student successfully completes course mechanisms required for accreditation which demonstrate mastery and fluency.

(iii) The sponsor ensures that students completing the distance education courses will achieve the equivalent of the stated classroom hours per course.

(3) A sponsor shall select as instructors only individuals who can demonstrate mastery of the material being taught and who possess 1 of the following qualifications:

(a) Experience as a faculty member of an institution of higher education that is authorized to grant degrees.

(b) A state licensed, certified residential, or certified general appraise**r** with 3 years of appraisal experience.

(c) Other experience acceptable to the sponsor for courses other than prelicensure courses.

(4) Instructors of the ~~uniform standards of professional appraisal practice (USPAP)~~ **USPAP** shall have complied with the AQB instructor certification program as required by the real property appraiser qualification criteria~~, effective January 1, 2003. This requirement will be effective in this state on January 1, 2003, or on the effective date of these rules, whichever is later~~.

R 339.23311 Courses not acceptable for prelicensure or continuing education.

Rule 311. The department shall not approve a prelicensure or continuing education course, nor shall it grant credit to a licensee ~~under section 2627(5) of the act~~ **for the USPAP course** for any of the following:

(a) Courses that do not provide student access to an instructor during the course.

(b) Courses that deal with employment-related topics such as explanations of rights, benefits, and responsibilities; organizational structure; and on-the-job methods, processes, or procedures.

(c) Membership in or service in an office, or on a committee of a professional, occupational, trade, or industry society or organization.

(d) Conferences, delegate assemblies, or similar meetings of professional organizations for policy-making purposes.

(e) Meetings and conventions of societies and associations; however, educational activities which are provided independently by an approved course sponsor and which are held concurrently with such meetings may be given credit.

(f) Attendance at lecture series, cultural performances, entertainment, or recreational meetings or activities or participation in travel groups, unless these activities are an integral part of a course that is approved pursuant to these rules.

(g) On-the-job training, apprenticeships, and other work experiences.

(h) Courses in sales promotion, motivation, marketing, psychology, time management, or mechanical office or business skills, including typing, speed-reading, or the use of office machines or equipment other than calculators or computers.

R 339.23315 Denial, suspension, or rescission of approval to offer courses; violation of code or rules.

Rule 315. A ~~person, including a~~ **real estate** sponsor **or instructor**~~,~~ may be subject to the penalties of section 602 of the code, including disciplinary action against a course approval, for any of the following reasons:

(a) Failure to comply with the provisions of the code or these rules.

(b) Having a high rate of failure on a licensing examination as a result of a lack of competent instruction.

(c) Making a substantial misrepresentation regarding an appraisal education sponsor or course of study.

(d) Making a false promise of a character likely to influence, persuade, or induce regarding an appraiser education sponsor or course of study.

(e) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents, salespersons, advertising or otherwise.

PART 3A. PRELICENSURE EDUCATION

R 339.23316 Prelicensure Education

Rule 316. Prelicensure education courses may be used to obtain credit for both prelicensure education and continuing education. However, the prelicensure exam shall not be used toward continuing education approved hours.

R 339.23317 Prelicensure education; application for course approval; forms; requirements; unacceptable courses.

Rule 317. (1) An application for approval of a prelicensure real estate appraiser education course shall be made on forms provided by the department. The department shall accept or reject the application.

(2) The application shall include all of the following information:

(a) The course title.

(b) The number of classroom hours to be given for completion of the course. ~~As provided in section 2617(3) of the act, a course shall be not less than 15 classroom hours in length.~~

(c) The name, business address, and telephone number of the sponsor.

(d) The name, business address, and telephone number of the course coordinator.

(e) The name, license number, and qualifications of instructors.

(f) A detailed outline of the subject matter to be covered and the number of classroom hours to be devoted to each topic, as it will appear in the student syllabus.

(g) A summary of the required topics for prelicensure that are covered in the course completed on the subject matter matrix provided by the department.

(h) The methodology for verifying and monitoring attendance, including the class makeup policy. A sponsor shall have a written makeup policy for students who are absent from all or a part of regularly scheduled class sessions. If there are no opportunities to make up missed sessions, that policy shall be so stated.

(i) The standards a student must meet to complete the course, including assignments, projects, examinations, and the passing score on the examination that is required ~~pursuant to the provisions of section 2617(3) of the act~~ to be given at the completion of the course for a student to demonstrate mastery of the material covered.

(j) Proof that the sponsor is an entity that may offer prelicensure real estate appraisal education courses in accordance with the provisions of section 2617(2) of the act.

R 339.23319 Prelicensure education; student records; permanent record; course completion certificate.

Rule 319. (1) A course sponsor shall establish and permanently maintain a record for each student. The record shall contain all of the following information:

(a) The student's name and address.

(b) The student's date of birth.

~~(b)~~**(c)** The number of classroom hours attended.

~~(c)~~**(d)** The title of the course and the ~~date of~~ **department's** course completion **number**.

(e) The date of course completion.

~~(d)~~**(f)** The student's grade.

(g) The student's real estate appraiser license number, if applicable.

(2) A course sponsor shall issue a certificate of completion to a **student or** licensee who **completes the entire course and** receives a passing grade in a prelicensure education course. The certificate shall include all of the following information:

(a) The name of the student.

(b) The name of the sponsor.

(c) The name of the course attended.

(d) The number of classroom hours completed by the student.

(e) The date of course completion.
(f) The signature of the course coordinator or instructor.
(g) The sponsor number assigned by the department.
(h) The course approval number assigned by the department.
(3) Within 15 business days after the conclusion of a course, a sponsor shall certify to the department the names of students who complete an approved course in a manner approved by the department.

R 339.23320 Prelicensure requirements for uniform standards of professional appraisal practice (USPAP).
Rule 320. (1) Applicants for licensure shall successfully complete the 15-hour national USPAP course required by the appraiser qualification board (AQB). Equivalency shall be determined through the AQB course approval program or by an alternate method established by the AQB.
(2) USPAP qualifying education credit shall only be awarded when the class is instructed by **both of** the following:
(a) An AQB certified instructor or instructors.
(b) At least 1 ~~residential or general state~~ certified **residential** appraiser **or certified general appraiser**.

PART 3B. CONTINUING EDUCATION

R 339.23321 Continuing education; application for course approval; forms; requirements.
Rule 321. (1) An application for approval of a continuing education course shall be made on forms provided by the department. The department shall accept or reject the application.
(2) The application shall include**, but not be limited to,** all of the following information:
(a) The course title.
(b) The number of classroom hours to be given for completion of the course. ~~As provided in section 2617 of the act, a course shall be not less than 2 classroom hours in length.~~
(c) The name, business address, and telephone number of the sponsor.
(d) The name, business address, and telephone number of the course coordinator.
(e) The name, license number, and qualifications of instructors.
(f) A detailed outline of the subject matter to be covered and the number of classroom hours to be devoted to each topic, as it will appear in the student syllabus.
(g) The methodology for verifying and monitoring attendance. ~~The course sponsor shall be responsible for determining the number of hours, if any, that will be granted to a licensee who does not attend all planned classroom hours.~~ **A student shall attend the entire course in order to obtain credit for the course. Credit for a distance learning course requires completion of the entire course.** A licensee shall not receive credit for attending the same course more than 1 time during the same license renewal cycle.
(h) The standards a student must meet to complete the course, including assignments, projects, or examinations. The sponsor at its discretion may give course examinations, but examinations are not required by the act or these rules for continuing education courses.
(i) Proof that the sponsor is an entity that may offer continuing education courses in accordance with the provisions of section 2617(2) of the act.
(j) Information to demonstrate that the course meets the requirements of ~~section 2627(3) and (4) of the act~~ **the AQB criteria** and is designed to improve and maintain the capability of a licensee to perform activities regulated by the act.

R 339.23326 Continuing education requirements for licensees.

Rule 326. (1) Appraisers shall successfully complete the 7-hour national USPAP update course, or its equivalent, at least every 2 years. Equivalency shall be determined through the AQB course approval program or by an alternate method established by the AQB.

(2) USPAP qualifying education credit shall only be awarded when the class is instructed by **both of** the following:

(a) An AQB certified instructor or instructors.

(b) At least 1 ~~residential or general state~~ certified **residential** appraiser **or certified general appraiser**.

(3) Every 4 years, appraisers shall successfully complete at least 2 hours of continuing education devoted to Michigan appraiser license law and rules.

PART 4. STANDARDS OF CONDUCT

R 339.23403 Limited real estate appraiser; state licensed real estate appraiser; certified residential real estate appraiser; certified general real estate appraiser; authorized functions.

Rule 403. (1) If a limited real estate appraiser is properly qualified to undertake an assignment, a limited real estate appraiser may perform either of the following appraisal services, if the report is signed by a supervisory ~~state-licensed,~~ certified residential or certified general real estate appraiser~~, as specified in section 2607(7) of the act,~~ who by virtue of signing the report, assumes full responsibility for the accuracy of the report content and conclusions:

(a) Appraise properties that are not federally related transactions or real estate related financial transactions.

(b) Assist a state-licensed, certified residential, or certified general real estate appraiser in the development of an appraisal for a federally related transaction or a real estate related financial transaction. The limited real estate appraiser shall not sign the report; however, the state licensed, certified residential, or certified general real estate appraiser shall acknowledge the specific contributions of the limited real estate appraiser within the appraisal report.

(2) If a state licensed real estate appraiser is properly qualified to undertake an assignment, a state-licensed real estate appraiser may perform any of the following appraisal services:

(a) Appraise properties that are not federally related transactions.

(b) Appraise 1 to 4-family residential properties, unless the transaction value is $1,000,000.00 or more or the property is deemed to be complex and therefore required to be appraised by a certified residential or certified general real estate appraiser.

(c) Appraise nonresidential properties for federally related transactions and real estate related financial transactions where the transaction value is less than $250,000.00.

(d) Assist a certified residential or certified general real estate appraiser in the development of an appraisal of a complex residential property or a nonresidential property that is the subject of a federally related transaction, as appropriate. The state licensed real estate appraiser shall not sign the report; however, the certified residential or certified general real estate appraiser shall acknowledge the specific contributions of the state-licensed real estate appraiser within the appraisal report.

(3) A certified residential real estate appraiser, if properly qualified to undertake an assignment, may perform any of the following appraisal assignments:

(a) Appraise properties that are not federally related transactions.

(b) Appraise 1 to 4-family residential properties without regard to complexity or value.

(c) Appraise nonresidential properties for federally related transactions and real estate related financial transactions where the transaction value is less than $250,000.00.

(d) Assist a certified general real estate appraiser in the development of an appraisal of a nonresidential property that is the subject of a federally related transaction, as appropriate. The certified residential real estate appraiser shall not sign the report. However, the certified general real estate appraiser shall identify the specific contributions of the certified residential real estate appraiser within the appraisal report. (4) The licensee authorized to sign the report shall identify all participating licensees and their contributions to the report. Signatures are required on appraisal reports according to the following chart:

Signatures Required: By License Level And Transaction Categories	Non-Federally Related Transactions & Non-Real Estate-Related Financial Transactions	Federally Related Transactions 1-4 Family Properties Less Than $1 Million In Transaction Value	Federally Related Transactions 1-4 Family Properties More Than $1 Million Or Complex Properties More Than $250,000 In Transaction Value	Federally Related Transactions Nonresiden-tial Properties Less Than $250,000 In Transaction Value	Federally Related Transactions Nonresiden-tial More Than $250,000 In Transaction Value
Limited Appraiser	YES	NO	NO	NO	NO
State-Licensed Appraiser	YES	YES	NO	YES	NO
Certified Residential Appraiser	YES	YES	YES	YES	NO
Certified General Appraiser	YES	YES	YES	YES	YES

NOTICE OF PUBLIC HEARING

SOAHR 2007-013
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES

BOARD OF REAL ESTATE APPRAISERS
NOTICE OF PUBLIC HEARING
June 19, 2007
9:00 a.m.
2501 Woodlake Circle Okemos Michigan
Conference Room 1

The Department of Labor and Economic Growth will hold a public hearing on June 19, 2007 at the Bureau of Commercial Services, 2501 Woodlake Circle, Okemos Michigan in Conference Room 1. The hearing will be held to receive public comments on proposed changes to the Administrative Rules for the Board of Real Estate Appraisers.

The proposed rule set #2007-013 amends the rules to be consistent with new Appraiser Qualification Board (AQB) Criteria adopted pursuant to 2006 PA 414. The new AQB Criteria will be effective January 1, 2008.

These rules are promulgated by authority conferred on the Department of Labor and Economic Growth by 1980 PA 299, MCL 339.205 and MCL 339.308. The rules will take effect January 1, 2008.

The rule set #2007-013 is published on the Michigan Government web site at http://www.michigan.gov/orr and in the June 15, 2007 issue of the *Michigan Register*. Comments may be submitted to the following address by 5:00 p.m. on June 19, 2007. Copies of the draft rules may also be obtained by mail or electronic transmission at the following address:

Amy Shell, Policy Specialist
Department of Labor and Economic Growth
Bureau of Commercial Services
P. O. Box 30018
Lansing MI 48909-7518
Phone: (517) 241-9219
FAX: (517) 373-3085
E-mail: shella1@michigan.gov

The hearing site is accessible, including handicap parking. People with disabilities requiring additional accommodations in order to participate in the hearing (such as information in alternative formats) should contact the Bureau at (517)241-9265 14 days prior to the hearing date. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. Information at this meeting will be presented by speakers and printed handouts.

CERTIFICATE OF NEED
REVIEW STANDARDS

MCL 24.208 states in part:

Sec. 8. The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(k) All of the items in section 7(l) after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, 1978 PA 368, MCL 333.22215 and 333.2217.

MCL 24.207 states in part:

Sec. 7. "Rule" means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency. Rule does not include any of the following:

* * *

(l) All of the following, after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, 1978 PA 368, MCL 333.22215 and 333.22217:
(i) The designation, deletion, or revision of covered medical equipment and covered clinical services.
(ii) Certificate of need review standards
(iii) Data reporting requirements and criteria for determining health facility viability.
(iv) Standards used by the department of community health in designating a regional certificate of need review agency.
(v) The modification of the 100 licensed bed limitation for short-term nursing care programs set forth in section 22210 of the public health code, 1978 PA 368, MCL 333.22210.

CERTIFICATE OF NEED REVIEW STANDARDS

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

CERTIFICATE OF NEED (CON) REVIEW STANDARDS FOR MAGNETIC RESONANCE IMAGING (MRI) SERVICES

(By authority conferred on the CON Commission by Section 22215 of Act No. 368 of the Public Acts of 1978, as amended, and sections 7 and 8 of Act No. 306 of the Public Acts of 1969, as amended, being sections 333.22215, 24.207, and 24.208 of the Michigan Compiled Laws.)

Section 1. Applicability

Sec. 1. (1) These standards are requirements for the approval of the initiation, expansion, replacement, relocation, or acquisition of MRI services and the delivery of services for all projects approved and Certificates of Need issued under Part 222 of the Code that involve magnetic resonance imaging services.

(2) Magnetic resonance imaging is a covered clinical service for purposes of Part 222 of the Code. An MRI unit approved pursuant to Section 9(1) seeking approval to operate pursuant to sections 3, 4, 5, 6, 7, or 8 shall be considered as a person requesting CON approval to initiate, expand, replace, relocate, or acquire a covered clinical service, as applicable.

(3) The Department shall use sections 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, and 17 as applicable, in applying Section 22225(1) of the Code, being Section 333.22225(1) of the Michigan Compiled Laws.

(4) The Department shall use Section 12, as applicable, in applying Section 22225(2)(c) of the Code, being Section 333.22225(2)(c) of the Michigan Compiled Laws.

(5) The Department shall use Section 11, as applicable, in applying Section 22215(1)(b) of the Code, being Section 333.22215(1)(b) of the Michigan Compiled Laws.

Section 2. Definitions

Sec. 2. (1) For purposes of these standards:

(a) "Acquisition of an existing MRI service or existing MRI unit(s)" means obtaining control or possession of an existing fixed or mobile MRI service or existing MRI unit(s) by contract, ownership, lease, or other comparable arrangement.

(b) "Actual MRI adjusted procedures," for purposes of sections 15 and 16, means the number of MRI procedures, adjusted in accordance with the applicable provisions of Section 13, performed on an existing MRI unit, or if an MRI service has two or more MRI units at the same site, the average number of MRI adjusted procedures performed on each unit, for the 12-month period reported on the most recently published "Available MRI Adjusted Procedures List," as of the date an application is deemed complete by the Department.

(c) "Available MRI adjusted procedures," for purposes of Section 15, means the number of MRI adjusted procedures performed by an existing MRI service in excess of 8,000 per fixed MRI unit and

7,000 per mobile MRI unit. For either a fixed or mobile MRI service, the number of MRI units used to compute available MRI adjusted procedures shall include both existing and approved but not yet operational MRI units. In determining the number of available MRI adjusted procedures, the Department shall use data for the 12-month period reported on the most recently published list of available MRI adjusted procedures as of the date an application is deemed complete by the Department.

In the case of an MRI service that operates, or has a valid CON to operate, more than one fixed MRI unit at the same site, the term means the number of MRI adjusted procedures in excess of 8,000 multiplied by the number of fixed MRI units at the same site. For example, if an MRI service operates, or
has a valid CON to operate, two fixed MRI units at the same site, the available number of MRI adjusted procedures is the number that is in excess of 16,000 (8,000 x 2) MRI adjusted procedures.

In the case of a mobile MRI unit, the term means the sum of all MRI adjusted procedures performed by the same mobile MRI unit at all of the host sites combined that is in excess of 7,000. For example, if a

mobile MRI unit serves five host sites, the term means the sum of MRI adjusted procedures for all five host sites combined that is in excess of 7,000 MRI adjusted procedures.

(d) "Central service coordinator" means the organizational unit that has operational responsibility for a mobile MRI unit(s). It shall be a legal entity authorized to do business in the State of Michigan.

(e) "Certificate of Need Commission" or "CON Commission" means the Commission created pursuant to Section 22211 of the Code, being Section 333.22211 of the Michigan Compiled Laws.

(f) "Code" means Act No. 368 of the Public Acts of 1978, as amended, being Section 333.1101 et seq. of the Michigan Compiled Laws.

(g) "Contrast MRI procedure" means an MRI procedure involving either of the following: (i) a procedure following use of a contrast agent or (ii) procedures performed both before and after the use of a contrast agent.

(h) "Dedicated pediatric MRI" means an MRI unit on which at least 80% of the MRI procedures are performed on patients under 18 years of age

(i) "Department" means the Michigan Department of Community Health (MDCH).

(j) "Doctor" means an individual licensed under Article 15 of the Code to engage in the practice of medicine, osteopathic medicine and surgery, chiropractic, dentistry, or podiatry.

(k) "Existing magnetic resonance imaging service" or "existing MRI service" means either the utilization of a CON-approved and operational MRI unit(s) at one site in the case of a fixed MRI service, and in the case of a mobile MRI service, the utilization of a CON-approved and operational mobile MRI unit(s) at each host site, on the date an application is submitted to the Department.

(l) "Existing magnetic resonance imaging unit" or "existing MRI unit" means a CON-approved and operational MRI unit used to provide MRI services.

(m) "Expand an existing fixed MRI service" means an increase in the number of fixed MRI units to be operated by the applicant.

(n) "Expand an existing mobile MRI service" means the addition of a mobile MRI unit that will be operated by a central service coordinator that is approved to operate one or more mobile MRI units as of the date an application is submitted to the Department.

(o) "Group practice," for purposes of Section 16(3)(b), means a group practice as defined pursuant to the provisions of 42 U.S.C. 1395nn (h)(4), commonly known as Stark II, and the Code of Federal Regulations, 42 CFR, Part 411, published in the Federal Register on August 14, 1995, or its replacement.

(p) "Health service area" or "HSA" means the geographic areas set forth in Section 19.

(q) "Host site" means the site at which a mobile MRI unit is authorized by CON to provide MRI services.

(r) "Initiate a fixed MRI service" means begin operation of a fixed MRI service at a site that does not provide or is not CON approved to provide fixed MRI services as of the date an application is submitted to the Department. The term does not include the acquisition or relocation of an existing fixed MRI service or the renewal of a lease.

(s) "Initiate a mobile MRI host site" means the provision of MRI services at a host site that has not received any MRI services within 12 months from the date an application is submitted to the Department.

The term does not include the renewal of a lease.

(t) "Initiate a mobile MRI service" means begin operation of a mobile MRI unit that serves two or more host sites.

The term does not include the acquisition of an existing mobile MRI service or the renewal of a lease.

(u) "Inpatient," for purposes of Section 13 of these standards, means an MRI visit involving an individual who has been admitted to the licensed hospital at the site of the MRI service/unit or in the case of an MRI unit that is not located at that licensed hospital site, an admitted patient transported from a licensed hospital site by ambulance to the MRI service.

(v) "IRB" or "institutional review board" means an institutional review board as defined by Public Law 93-348 that is regulated by Title 45 CFR 46.

(w) "Licensed hospital site" means a health facility licensed under Part 215 of the Code. In the case of a single site hospital, it is either (i) the location of the facility authorized by license and listed on that licensee's certificate of licensure or (ii) in the case of a hospital with multiple sites, the location of each separate and distinct inpatient unit of the health facility as authorized by the licensee's certificate of licensure.

(x) "Magnetic resonance" or "MR" means the analysis of the interaction that occurs between radio frequency energy, atomic nuclei, and strong magnetic fields to produce cross sectional images similar to those displayed by computed tomography (CT) but without the use of ionizing radiation.

(y) "Magnetic resonance imaging adjusted procedure" or "MRI adjusted procedure" means an MRI visit, at an existing MRI service, that has been adjusted in accordance with the applicable provisions of Section 13.

(z) "Magnetic resonance imaging database" or "MRI database" means the database, maintained by the Department pursuant to Section 12 of these standards, that collects information about each MRI visit at MRI services located in Michigan.

(aa) "Magnetic resonance imaging procedure" or "MRI procedure" means a procedure conducted by an MRI unit approved pursuant to sections 3, 4, 5, 6, 7, 8 or 10 of these standards which is either a single, billable diagnostic magnetic resonance procedure or a procedure conducted by an MRI unit at a site participating with an approved diagnostic radiology residency program, under a research protocol approved by an institutional review board. The capital and operating costs related to the research use are charged to a specific research account and not charged to or collected from third-party payors or patients. The term does not include a procedure conducted by an MRI unit approved pursuant to Section 9(1).

(bb) "Magnetic resonance imaging services" or "MRI services" means either the utilization of an authorized MRI unit(s) at one site in the case of a fixed MRI service or in the case of a mobile MRI service, the utilization of an authorized mobile MRI unit at each host site.

(cc) "Magnetic resonance imaging unit" or "MRI unit" means the magnetic resonance system consisting of an integrated set of machines and related equipment necessary to produce the images and/or spectroscopic quantitative data from scans.

(dd) "Magnetic resonance imaging visit" or "MRI visit" means a single patient visit to an MRI service/unit that may involve one or more MRI procedures.

(ee) " Medicaid" means title XIX of the social security act, chapter 531, 49 Stat. 620, 1396r-6 and1396r-8 to 1396v.

(ff) "Metropolitan statistical area county" means a county located in a metropolitan statistical area as that term is defined under the "standards for defining metropolitan and micropolitan statistical areas" by the statistical policy office of the office of information and regulatory affairs of the United States office of management and budget, 65 F.R. p. 82238 (December 27, 2000) and as shown in Appendix A.

(gg) "Micropolitan statistical area county" means a county located in a micropolitan statistical area as that term is defined under the "standards for defining metropolitan and micropolitan statistical areas" by the statistical policy office of the office of information and regulatory affairs of the United States office of management and budget, 65 F.R. p. 82238 (December 27, 2000) and as shown in Appendix A.

(hh) "Mobile MRI unit" means an MRI unit operating at two or more host sites and that has a central service coordinator. The mobile MRI unit shall operate under a contractual agreement for the provision of MRI services at each host site on a regularly scheduled basis.

(ii) "Ownership interest, direct or indirect," for purposes of these standards, means a direct ownership relationship between a doctor and an applicant entity or an ownership relationship between a doctor and an entity that has an ownership relationship with an applicant entity.

(jj) "Pediatric patient," for purposes of these standards, except for Section 10, means a patient who is 12 years of age or less.

(kk) "Planning area," for purposes of these standards, means

(i) in the case of a proposed fixed MRI service or unit, the geographic area within a 20-mile radius from the proposed site if the proposed site is not in a rural or micropolitan statistical area county and a 75-mile radius from the proposed site if the proposed site is in a rural or micropolitan statistical area county. For purposes of Section 7(3) of these standards, the planning area shall be measured from the original site at which the MRI service was first initiated.

(ii) in the case of a proposed mobile MRI service or unit, except as provided in subsection (iii), the geographic area within a 20-mile radius from each proposed host site if the proposed site is not in a rural or micropolitan statistical area county and within a 75-mile radius from each proposed host site if the proposed site is in a rural or micropolitan statistical area county.

(iii) in the case of a proposed mobile MRI service or unit meeting the requirement of Section 13(2)(d), the health service area in which all the proposed mobile host sites will be located.

(ll) "Referring doctor," for purposes of these standards, means the doctor of record who ordered the MRI procedure(s) and either to whom the primary report of the results of an MRI procedure(s) is sent or in the case of a teaching facility, the attending doctor who is responsible for the house officer or resident that requested the MRI procedure.

(mm) "Relocate an existing MRI service and/or MRI unit(s)" means a change in the location of an existing MRI service and/or MRI unit(s) from the existing site to a different site within the relocation zone.

(nn) "Relocation zone," for purposes of these standards, means the geographic area that is within a 10-mile radius of the existing site of the MRI service or unit to be relocated.

(oo) "Renewal of a lease" means extending the effective period of a lease for an existing MRI unit that does not involve either replacement of the MRI unit, as defined in Section 2(1)(pp)(i), or (ii) a change in the parties to the lease.

(pp) "Replace an existing MRI unit" means (i) any equipment change involving a change in, or replacement of, the magnet resulting in an applicant operating the same number and type (fixed or mobile) of MRI units before and after project completion or (ii) an equipment change other than a change in the magnet that involves a capital expenditure of $750,000 or more in any consecutive 24-

month period or (iii) the renewal of a lease. The term does not include an upgrade of an existing MRI service or unit, and it does not include a host site that proposes to receive mobile MRI services from a different central service coordinator if the requirements of Section 3(5)(a)-(e), as applicable, have been met.

(qq) "Research scan" means an MRI scan administered under a research protocol approved by the applicant's institutional review board.

(rr) "Re-sedated patient" means a patient, either pediatric or adult, who fails the initial sedation during the scan time and must be extracted from the unit to rescue the patient with additional sedation.

(ss) "Rural county" means a county not located in a metropolitan statistical area or micropolitan statistical areas as those terms are defined under the "standards for defining metropolitan and micropolitan statistical areas" by the statistical policy office of the office of information regulatory affairs of the United States office of management and budget, 65 F.R. p. 82238 (December 27, 2000) and as shown in Appendix A.

(tt) "Sedated patient" means a patient that meets all of the following:

(i) whose level of consciousness is either conscious-sedation or a higher level of sedation, as defined by the American Association of Anesthesiologists, the American Academy of Pediatrics, the Joint Commission on the Accreditation of Health Care Organizations, or an equivalent definition.

(ii) who is monitored by mechanical devices while in the magnet.

(iii) who requires observation while in the magnet by personnel, other than employees routinely assigned to the MRI unit, who are trained in cardiopulmonary resuscitation (CPR).

(uu) "Site," for purposes of these standards, means

(i) in the case of a licensed hospital site, a location that is part of the licensed hospital site or a location that is contiguous to the licensed hospital site or

(ii) in the case of a location that is not a licensed hospital site, a location at the same address or a location that is contiguous to that address.

(vv) "Special needs patient" means a non-sedated patient, either pediatric or adult, with any of the following conditions: down syndrome, autism, attention deficit hyperactivity disorder (ADHD), developmental delay, malformation syndromes, hunter's syndrome, multi-system disorders, psychiatric disorders, and other conditions that make the patient unable to comply with the positional requirements of the exam.

(ww) "Teaching facility," for purposes of these standards, means a licensed hospital site, or other location, that provides either fixed or mobile MRI services and at which residents or fellows of a training program in diagnostic radiology, that is approved by the Accreditation Council on Graduate Medical Education or American Osteopathic Association, are assigned.

(xx) "Unadjusted MRI scan" means an MRI procedure performed on a single anatomical site as defined by the MRI database and that is not adjusted pursuant to the applicable provisions of Section 13.

(yy) "Upgrade an existing MRI unit" means any equipment change that

(i) does not involve a change in, or replacement of, the magnet; does not result in an increase in the number of MRI units; or does not result in a change in the type of MRI unit (e.g., changing a mobile MRI unit to a fixed MRI unit); and

(ii) involves a capital expenditure of less than $750,000 in any consecutive 24-month period.

(2) Terms defined in the Code have the same meanings when used in these standards.

Section 3. Requirements for approval of applicants proposing to initiate an MRI service or mobile MRI host site

Sec. 3. (1) An applicant proposing to initiate a fixed MRI service shall demonstrate that 6,000 available MRI adjusted procedures, from within the same planning area as the proposed service/unit, per proposed unit result from application of the methodology in Section 15 of these standards.

(2)(a) An applicant proposing to initiate a mobile MRI service that involves beginning operation of a mobile MRI unit shall demonstrate that a minimum of 5,500 available MRI adjusted procedures, from within the same planning area as the proposed service/unit, per proposed unit result from application of the methodology in Section 15 of these standards.

(b) The applicant, whether the central service coordinator or the host site, must demonstrate that a minimum of 600 available MRI adjusted procedures, from within the same planning area as the proposed service/unit, result from the application of the methodology in Section 15 of these standards, for each proposed host site that

(i) is not located in a rural or micropolitan statistical area county and

(ii) has not received any mobile MRI service within the most recent 12-month period as of the date an application is submitted to the Department.

(c) The applicant, whether the central service coordinator or the host site, must demonstrate that a minimum of 400 available MRI adjusted procedures, from within the same planning area as the proposed service/unit, result from the application of the methodology in Section 15 of these standards for each proposed host site that

(i) is located in a rural or micropolitan statistical area county and

(ii) has not received any mobile MRI service within the most recent 12-month period as of the date an application is submitted to the Department.

(3)(a) An applicant, whether the central service coordinator or a proposed host site, proposing to initiate a mobile MRI host site not in a rural or micropolitan statistical area county, that is to be part of an existing mobile MRI service, must demonstrate that at least 600 available MRI adjusted procedures, from within the same planning area as the proposed service/unit, result from the application of the methodology in Section 15 of these standards for that host site.

(b) An applicant, whether the central service coordinator or a proposed host site, proposing to initiate a mobile MRI host site in a rural or micropolitan statistical area county, that is to be part of an existing mobile MRI service, must demonstrate that at least 400 available MRI adjusted procedures, from within the same planning area as the proposed service/unit, result from the application of the methodology in Section 15 of these standards for that host site.

(4) An applicant that meets all of the following requirements shall not be required to be in compliance with subsection (1):

(a) The applicant is proposing to initiate a fixed MRI service.

(b) The applicant is currently a host site being served by one or more mobile MRI units.

(c) The applicant has received, in aggregate, the following:

(i) at least 6,000 MRI adjusted procedures within the most recent 12-month period for which data, verifiable by the Department, are available or

(ii) at least 4,000 MRI adjusted procedures within the most recent 12-month period for which data, verifiable by the Department, are available, and the applicant meets all of the following:

(A) is located in a county that has no fixed MRI machines that are pending, approved by the Department, or operational at the time the application is deemed submitted;

(B) the nearest fixed MRI machine is located more than 15 radius miles from the application site;

(C) the applicant is a nonprofit licensed hospital site;

(D) the applicant certifies in its CON application, by providing a governing body resolution, that the board of trustees of the facility has performed a due diligence investigation and has determined that

the fixed MRI service will be economically viable to ensure provision of safe and appropriate patient access within the community hospital setting.

(d) All of the MRI adjusted procedures provided at the applicant's approved site in the most recent 12-month period, referenced in (c) above, by each mobile MRI service/units from which any of the MRI adjusted procedures are being utilized to meet the minimum 6,000 or 4,000 MRI adjusted procedures shall be utilized to meet the requirements of (c). [For example: If mobile network 19 provided 4,000 adjusted procedures, network 21 provided 2,100, and network 18 provided 1,000, all of the adjusted procedures from network 19 and 21 must be used (i.e., 6,100) but the 1,000 adjusted procedures from network 18 do not need to be used to meet the 6,000 minimum.]

(e) The applicant shall install the fixed MRI unit at the same site as the existing approved host site.

(5) Initiation of a mobile MRI host site does not include the provision of mobile MRI services at a host site if the applicant, whether the host site or the central service coordinator, demonstrates or provides each of the following, as applicable:

(a) The host site has received mobile MRI services from an existing mobile MRI unit within the most recent 12-month period as of the date an application is submitted to the Department.

(b) The addition of a host site to a mobile MRI unit will not increase the number of MRI units operated by the central service coordinator or by any other person.

(c) Notification to the Department of the addition of a host site prior to the provision of MRI services by that mobile MRI unit in accordance with (d).

(d) A signed certification, on a form provided by the Department, whereby each host site for each mobile MRI unit has agreed and assured that it will provide MRI services in accordance with the terms for approval set forth in Section 12 of these standards, as applicable. The central service coordinator also shall identify all current host sites, on this form, that are served by the mobile route as of the date of the signed certification or are committed in writing to be served by the mobile route.

(e) The central service coordinator requires, as a condition of any contract with a host site, compliance with the requirements of these standards by that host site, and the central service coordinator assures compliance, by that host site, as a condition of the CON issued to the central service coordinator.

Section 4. Requirements for approval of an application proposing to expand an existing MRI service

Sec. 4. (1) An applicant proposing to expand an existing fixed MRI service shall demonstrate that its existing fixed MRI units (excluding MRI units approved pursuant to Section 10) have performed at least an average of 11,000 adjusted procedures for each fixed unit based on the application of the methodology in Section 13 and as documented in accordance with Section 14 of these standards.

(a) The additional unit shall be located at the same site unless the requirements of Section 7(2) have been met.

(2) An applicant proposing to expand an existing fixed MRI service approved pursuant to Section 10 shall demonstrate that its existing fixed MRI units have performed at least an average of 3,500 adjusted procedures for each fixed unit, based on the application of the methodology in Section 13 and as documented in accordance with Section 14 of these standards.

(a) The additional unit shall be located at the same site unless the requirements of Section 7(2) have been met.

(3) An applicant proposing to expand an existing mobile MRI service shall demonstrate that 4,000 available MRI adjusted procedures, from within the same planning area as the proposed unit, per proposed additional unit result from application of the methodology in Section 15 of these standards.

(4) An applicant proposing to expand an existing mobile MRI service must provide a copy of the existing or revised contracts between the central service coordinator and each host site(s) that includes the same stipulations as specified in Section 6(2).

Section 5. Requirements for approval of an applicant proposing to replace an existing MRI unit

Sec. 5. An applicant proposing to replace an existing MRI unit shall demonstrate that the proposed project meets each of the following requirements:

(1) Within the most recent 12-month period for which data, verifiable by the Department, are available, at least the applicable minimum number of MRI adjusted procedures set forth in subdivision (a), (b), or (c) has been performed. In meeting this requirement, an applicant shall not include any procedures conducted by an MRI unit approved pursuant to Section 9(1).

(a) Each existing mobile MRI unit on the network has performed in excess of an average of 5,500 MRI adjusted procedures per MRI unit.

(b) Each existing fixed MRI unit at the current site has performed in excess of an average of 6,000 MRI adjusted procedures per MRI unit.

(c) Each existing dedicated pediatric MRI unit at the current site has performed in excess of 3,500 MRI adjusted procedures per MRI unit.

(2) An applicant proposing to replace an existing MRI unit that does not involve a renewal of a lease shall demonstrate that the MRI unit to be replaced is fully depreciated according to generally accepted accounting principles; the existing equipment clearly poses a threat to the safety of the public; or the proposed replacement equipment offers a significant technological improvement which enhances quality of care, increases efficiency, and reduces operating costs.

(3) Equipment that is replaced shall be removed from service and disposed of or rendered considerably inoperable on or before the date that the replacement equipment becomes operational.

(4) An applicant proposing to replace an existing mobile MRI unit must provide a copy of the existing or revised contracts between the central service coordinator and each host site(s) that includes the same stipulations as specified in Section 6(2).

(5) The replacement unit shall be located at the same site unless the requirements of Section 7(2) have been met.

Section 6. Additional requirements for approval of an applicant proposing to initiate a mobile MRI service

Sec. 6. (1) An applicant proposing to initiate a mobile MRI service that involves beginning operation of a mobile MRI unit shall identify the proposed regular route schedule and the procedures for handling emergency situations.

(2) An applicant proposing a mobile MRI service shall submit copies of all proposed contracts related to the mobile MRI service in the CON application submitted by the central service coordinator. The contract shall include at least the following:

(a) A signed certification, on a form provided by the Department, whereby each host site has agreed and assured that it will provide MRI services for each mobile MRI unit in accordance with the terms of approval set forth in Section 12 of these standards, as applicable. The central service coordinator also shall identify all current host sites, on this form, as of the date of the signed certification.

(b) A statement that requires compliance with the requirements of these standards by that host site and assures compliance, by that host site, as a condition of the CON issued to the central service coordinator.

(c) A signed agreement between the central service coordinator and the host site(s) that states that for any host site applying, at any time in the future, for a fixed MRI unit under Section 3(4), that the mobile services at the host site will not cease until the fixed unit is in operation or upon the request of the host site. Further, the applicant applying for the fixed MRI unit must stipulate in the application at the time it is submitted to the Department that it has notified all affected host sites as well as the central service coordinator at least six months prior to beginning operation of the fixed MRI unit.

Section 7. Requirements for approval of an applicant proposing to relocate an existing MRI service and/or MRI unit(s)

Sec 7. (1) An applicant proposing to relocate an existing fixed MRI service and its unit(s) shall demonstrate that the proposed project meets all of the following:

(a) The existing MRI service and its unit(s) to be relocated has been in operation for at least 36 months as of the date an application is submitted to the Department.

(b) The proposed new site of the existing MRI service and its unit(s) to be relocated is in the relocation zone.

(c) The proposed project will not result in the replacement of the existing MRI unit(s) to be relocated unless the applicant demonstrates that the requirements of Section 5, as applicable, have been met.

(d) The proposed project will not result in an increase of the number of MRI units operated by the existing MRI service at the proposed site unless the applicant demonstrates that the requirements of Section 4, as applicable, have been met.

(e) Each existing MRI unit to be relocated performed at least the applicable minimum number of MRI adjusted procedures set forth in Section 12(1)(d)(i) of these standards based on the most recent 12-month period for which the Department has verifiable data.

(f) The applicant agrees to operate the MRI service and its unit(s) in accordance with all applicable project delivery requirements set forth in Section 12 of these standards.

(2) An applicant proposing to relocate a fixed MRI unit of an existing MRI service shall demonstrate that the proposed project meets all of the following:

(a) The existing MRI service from which the MRI unit(s) to be relocated has been in operation for at least 36 months as of the date an application is submitted to the Department.

(b) The proposed new site for the MRI unit(s) to be relocated is in the relocation zone.

(c) The proposed project will not result in the replacement of the MRI unit(s) to be relocated unless the applicant demonstrates that the requirements of Section 5, as applicable, have been met.

(d) The proposed project will not result in an increase of the number of MRI units operated by an existing MRI service at the proposed site unless the applicant demonstrates that the requirements of Section 4, as applicable, have been met.

(e) Each existing MRI unit at the service from which a unit is to be relocated performed at least the applicable minimum number of MRI adjusted procedures set forth in Section 12(1)(d)(i) of these standards based on the most recent 12-month period for which the Department has verifiable data.

(f) The applicant agrees to operate the MRI unit(s) at the proposed site in accordance with all applicable project delivery requirements set forth in Section 12 of these standards.

(g) For volume purposes, the new site shall remain associated to the original site for a minimum of three years.

(3) An applicant that meets all of the following requirements shall be exempt from relocating within the relocation zone:

(a) The licensed hospital site to which the MRI service is to be relocated and the MRI service at the site from which the MRI service is to be relocated are owned by the same person as defined in Section 1106 of this public act or the same governmental entity.

(b) The licensed hospital site to which the MRI service is to be relocated is located within the planning area.

(c) As evidenced in the governing body resolution required in (e), the MRI service to be relocated shall cease at its current location within 24 months after the date the application receives a final decision of approval from the Department or upon the date the service becomes operational at the relocation site, whichever occurs first.

(d) The MRI service shall be relocated and shall be operational within 24 months after the date the application receives a final decision of approval from the Department or the CON to relocate the MRI service shall expire.

(e) The CON application includes a resolution of the applicant's governing body that commits to the provisions of (c) and (d).

(f) The relocation of the MRI service shall not result in the licensed hospital site having more than one fixed MRI unit.

Section 8. Requirements for approval of an applicant proposing to acquire an existing MRI service or an existing MRI unit(s)

(1) An applicant proposing to acquire an existing fixed or mobile MRI service and its unit(s) shall demonstrate that the proposed project meets all of the following:

(a) The project will not change the number of MRI units at the site of the MRI service being acquired unless the applicant demonstrates that the project is in compliance with the requirements of Section 3 or 4, as applicable.

(b) The project will not result in the replacement of an MRI unit at the MRI service to be acquired unless the applicant demonstrates that the requirements of Section 5 have been met.

(c) The applicant agrees to operate the MRI service and its unit(s) in accordance with all applicable project delivery requirements set forth in Section 12 of these standards.

(d) For the first application proposing to acquire an existing fixed or mobile MRI service on or after July 1, 1997, the existing MRI service and its unit(s) to be acquired shall not be required to be in compliance with the volume requirements applicable to a seller/lessor on the date the acquisition occurs. The MRI service shall be operating at the applicable volume requirements set forth in Section

12(1)(d)(i) of these standards in the second 12 months after the effective date of the acquisition, and annually thereafter.

(e) For any application proposing to acquire an existing fixed or mobile MRI service and its unit(s), except the first application approved pursuant to subsection (d), an applicant shall be required to document that the MRI service and its unit(s) to be acquired is operating in compliance with the volume requirements set forth in Section 12(1)(d)(i) of these standards applicable to an existing MRI service on the date the application is submitted to the Department.

(2) An applicant proposing to acquire an existing fixed or mobile MRI unit of an existing MRI service shall demonstrate that the proposed project meets all of the following:

(a) The project will not change the number of MRI units at the site of the MRI service being acquired, subject to the applicable requirements under Section 7(2), unless the applicant demonstrate**s** that the project is in compliance with the requirements of Section 3 or 4, as applicable.

(b) The project will not result in the replacement of an MRI unit at the MRI service to be acquired unless the applicant demonstrates that the requirements of Section 5 have been met.

(c) The applicant agrees to operate the MRI unit(s) in accordance with all applicable project delivery requirements set forth in Section 12 of these standards.

Section 9. Requirements for approval of an applicant proposing an MRI unit to be used exclusively for research

Sec. 9. (1) An applicant proposing an MRI unit to be used exclusively for research shall demonstrate each of the following:

(a) The applicant operates a diagnostic radiology residency program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or an equivalent organization.

(b) The MRI unit shall operate under a protocol approved by the applicant's institutional review board.

(c) The applicant agrees to operate the unit in accordance with the terms of approval in Section 12(2).

(2) An applicant meeting the requirements of subsection (1) shall be exempt from meeting the requirements and terms of sections 3, 4, 5, 6, 7, 8, 12 [with the exception of 12(1)(d)(iii)], 14, and 15 of these standards.

Section 10. Requirements for approval of an applicant proposing to establish dedicated pediatric MRI

Sec. 10. (1) An applicant proposing to establish dedicated pediatric MRI shall demonstrate all of the following:

(A) the applicant shall have experienced at least 7,000 pediatric (< 18 years old) discharges (excluding normal newborns) in the most recent year of operation.

(b) the applicant shall have performed at least 5,000 pediatric (< 18 years old) surgeries in the most recent year of operation.

(c) The applicant shall have an active medical staff, at the time the application is submitted to the Department, that includes, but is not limited to, physicians who are fellowship-trained in the following pediatric specialties:

(i) pediatric radiology (at least two)

(ii) pediatric anesthesiology
(iii) pediatric cardiology
(iv) pediatric critical care
(v) pediatric gastroenterology
(vi) pediatric hematology/oncology
(vii) pediatric neurology
(viii) pediatric neurosurgery
(ix) pediatric orthopedic surgery
(x) pediatric pathology
(xi) pediatric pulmonology
(xii) pediatric surgery
(xiii) neonatology

(d) The applicant shall have in operation the following pediatric specialty programs at the time the application is submitted to the Department:
(i) pediatric bone marrow transplant program
(ii) established pediatric sedation program
(iii) pediatric open heart program

(2) An applicant meeting the requirements of subsection (1) shall be exempt from meeting the requirements of Section 4, of these standards.

Section 11. Requirements for approval -- all applicants

Sec. 11. An applicant shall provide verification of Medicaid participation at the time the application is submitted to the Department. An applicant that is initiating a new service or is a new provider not currently enrolled in Medicaid shall provide a signed affidavit stating that proof of Medicaid participation will be provided to the Department within six (6) months from the offering of services if a CON is approved. If the required documentation is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

Section 12. Project delivery requirements--terms of approval

Sec. 12. (1) An applicant shall agree that, if approved, MRI services, whether fixed or mobile, shall be delivered and maintained in compliance with the following terms of CON approval for each geographical location where the applicant operates an MRI unit:
(a) Compliance with these standards.
(b) Compliance with applicable safety and operating standards for the specific MRI unit approved.
(c) Compliance with the following quality assurance standards:
(i) An applicant shall develop and maintain policies and procedures that establish protocols for the following system performance measures. The protocols shall establish the required benchmarks; identify the testing interval, which shall be at least quarterly; and identify the MRI staff person responsible for testing the system performance measures.
(A) Signal-to-noise ratio.
(B) Spatial resolution.
(C) Slice thickness, location, and separation.
(D) Spatial linearity.

(E) Field homogeneity and drift.
(F) System calibration and stability.
(G) Cryogen level and boiloff rate.
(H) Radio frequency power monitor.
(I) Hard copy image quality.

In addition to the designated staff person, the system performance measures in subdivisions (A) through (F) and (H) also shall be evaluated by an appropriately trained MRI physicist or engineer. The physicist/engineer shall conduct tests of these system performance measures when the MRI unit begins to operate, and annually thereafter. The purpose of the physicist/engineer test shall be to certify to the Department that the MRI unit meets or exceeds all of the system performance specifications of the manufacturer of the MRI unit in effect for that MRI unit at the time of installation or most recent upgrade. The physicist/engineer shall make available for review the periodic system performance measures test data established in this subsection.

(ii) An applicant shall develop and maintain policies, procedures, and protocols for assuring the functionality of each of the following MRI accessories. The protocols shall establish the required benchmarks, identify the testing interval for each accessory, and identify the staff person responsible for testing the system performance measures.

(A) All surface coils.
(B) Positioning devices.
(C) Physiologic triggering/monitoring equipment.
(D) Patient communication devices.
(E) Scan table position indicator and drives.
(F) Data network including storage and retrieval.
(G) Emergency rundown/shutdown units.
(H) Hard copy devices.

(iii) An applicant shall develop and maintain policies and procedures that establish protocols for assuring the effectiveness of operation and the safety of the general public, patients, and staff in the MRI service. Each of the following must be included and the staff person responsible for development and enforcement of these policies shall be indicated.

(A) Access to the MRI service.
(B) Access to the MRI scan room.
(C) Patient safety clearance before imaging and safety during imaging.
(D) Adverse bioeffects, including
(1) acoustic hazard.
(2) radio frequency burn hazard.
(3) specific absorption rates.
(4) peripheral nerve stimulation.
(5) pregnancy.
(6) magnet quench hazard.
(E) Sedation.
(F) Contrast administration.
(G) Treatment of adverse reactions to contrast.
(H) Patient monitoring for sedation, anesthesia, and unstable patients.
(I) Patient resuscitation, management of emergencies, maintenance of cardiopulmonary resuscitation equipment, and certification requirements for personnel for either basic or advanced cardiopulmonary resuscitation.
(J) Screening for metallic implants, pacemakers, and metallic foreign bodies, as well as a list of contraindications.

(K) Mechanism for consultation regarding difficult cases.

(L) Pulse sequence protocols for specific indications.

(M) Institutional review board policies relating to non-FDA approved pulse sequences or investigational procedures.

(N) Staff inservice regarding subdivisions (A) through (M).

(iv) An applicant shall establish a schedule for preventive maintenance for the MRI unit.

(v) An applicant shall maintain records of the results of the periodic test data required by subdivisions (i) and (ii), including the results of the tests performed by the MRI physicist/engineer required in subdivision (i). An applicant, upon request, shall submit annually to the Department a report of the test data results and evidence of compliance with the applicable project delivery requirements.

(vi) An applicant shall provide documentation identifying the specific individuals that form the MRI team. At a minimum, the MRI team shall consist of the following professionals:

(A) An MRI team leader who shall be responsible for

(1) developing criteria for procedure performance.

(2) developing protocols for procedure performance.

(3) developing a clinical data base for utilization review and quality assurance purposes.

(4) transmitting requested data to the Department.

(5) screening of patients to assure appropriate utilization of the MRI service.

(6) taking and interpretation of scans.

(7) coordinating MRI activity at MRI host sites for a mobile MRI unit.

(8) identifying and correcting MRI image quality deficiencies.

(B) Physicians who shall be responsible for screening of patients to assure appropriate utilization of the MRI service and taking and interpretation of scans. At least one of these physicians shall be a board-certified radiologist.

(C) An appropriately trained MRI technician who shall be responsible for taking an MRI scan.

(D) An MRI physicist/engineer available as a team member on a full-time, part-time, or contractual basis. An MRI physicist/engineer shall be responsible for at least the following:

(1) providing technical specifications for new equipment and assistance in equipment procurement.

(2) performing or validating technical performance for system acceptance.

(3) establishing preventive maintenance schedules and quality assurance test procedures and recording and reviewing preventive maintenance and quality assurance data.

(4) facilitating the repair of acute system malfunctions.

(5) training personnel in the MRI service with respect to the technical aspects of MRI scanning and patient and staff safety.

(6) assisting in designing and optimizing clinical imaging procedures.

(E) System maintenance personnel who shall be responsible for calibrating the MRI system and preventive maintenance at regularly scheduled intervals and who shall compile and submit quality control data to the MRI team leader.

(vii) An applicant shall document that the MRI team members have the following qualifications:

(A) The MRI team leader is a board-certified or board-eligible radiologist, or other physician trained in MRI, who spends greater than 75 percent of his or her professional time in multiple anatomic site medical imaging. The MRI team leader also shall demonstrate that he or she meets the requirements set forth in subsection (B) for a physician who interprets MRI images.

(B) Each physician credentialed to interpret MRI scans meets the requirements of each of the following:

(1) The physician is licensed to practice medicine in the State of Michigan.

(2) The physician has had at least 60 hours of training in MRI physics, MRI safety, and MRI instrumentation in a program that is part of an imaging program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, and the physician meets the requirements of subdivision (i), (ii), or (iii):

(i) Board certification by the American Board of Radiology, the American Osteopathic Board of Radiology, or the Royal College of Physicians and Surgeons of Canada. If the diagnostic radiology program completed by a physician in order to become board certified did not include at least two months of MRI training, that physician shall document that he or she has had the equivalent of two months of postgraduate training in clinical MRI imaging at an institution which has a radiology program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association.

(ii) Formal training by an imaging program(s), accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, that included two years of training in cross-sectional imaging and six months training in organ-specific imaging areas.

(iii) A practice in which at least one-third of total professional time, based on a full-time clinical practice during the most recent 5-year period, has been the primary interpretation of MR imaging.

(3) The physician has completed and will complete a minimum of 40 hours every two years of Category in Continuing Medical Education credits in topics directly involving MR imaging.

(4) The physician interprets, as the primary interpreting physician, at least 250 unadjusted MRI scans annually.

(C) An MRI technologist who is registered by the American Registry of Radiologic Technicians or by the American Registry of Magnetic Resonance Imaging Technologists (ARMRIT) and has, or will have within 36 months of the effective date of these standards or the date a technologist is employed by an MRI service, whichever is later, special certification in MRI. If a technologist does not have special certification in MRI within either of the 3-year periods of time, all continuing education requirements shall be in the area of MRI services.

(D) An applicant shall document that an MRI physicist/engineer is appropriately qualified. For purposes of evaluating this subdivision, the Department shall consider it prima facie evidence as to the qualifications of the physicist/engineer if the physicist/engineer is certified as a medical physicist by the American Board of Radiology, the American Board of Medical Physics, or the American Board of Science in Nuclear Medicine. However, the applicant may submit and the Department may accept other evidence that an MRI physicist/engineer is qualified appropriately.

(E) An applicant shall document that system maintenance personnel are qualified on the basis of training and experience to perform the calibration, preventive maintenance, and quality control functions on the specific MRI unit approved.

(viii) The applicant shall have, within the MRI unit/service, equipment and supplies to handle clinical emergencies that might occur in the unit. MRI service staff will be trained in CPR and other appropriate emergency interventions. A physician shall be on-site, in, or immediately available to the MRI unit at all times when patients are undergoing scans.

(ix) In addition to all other applicable terms of approval, each mobile MRI unit shall have an operations committee with members representing each host site, the central service coordinator, and the medical director. This committee shall oversee the effective and efficient use of the MRI unit, establish the normal route schedule, identify the process by which changes shall be made to the schedule, develop procedures for handling emergency situations, and review the ongoing operations of the mobile MRI unit on at least a quarterly basis.

(X) An applicant shall participate in Medicaid at least 12 consecutive months within the first two years of operation and continue to participate annually thereafter.

(d) Compliance with the following terms of approval, as applicable:

(i) MRI units shall be operating at a minimum average annual level of utilization during the second 12 months of operation, and annually thereafter, of 6,000 actual MRI adjusted procedures per unit for fixed MRI services, 5,500 actual MRI adjusted procedures per unit for mobile MRI services, and a total of 3,500 MRI adjusted procedures per unit for dedicated pediatric MRI. Each mobile host site in a rural or micropolitan statistical area county shall have provided at least a total of 400 adjusted procedures during its second 12 months of operation, and annually thereafter, from all mobile units providing services to the site. Each mobile host site not in a rural or micropolitan statistical area county shall have provided at least a total of 600 adjusted procedures during its second 12 months of operation and annually thereafter, from all mobile units providing services to the site. In meeting these requirements, an applicant shall not include any MRI adjusted procedures performed on an MRI unit used exclusively for research and approved pursuant to Section 9(1).

(ii) The applicant, to assure that the MRI unit will be utilized by all segments of the Michigan population, shall

(A) provide magnetic resonance services to all individuals based on the clinical indications of need for the service and not on ability to pay or source of payment.

(B) maintain information by source of payment to indicate the volume of care from each source provided annually.

Compliance with selective contracting requirements shall not be construed as a violation of this term.

(iii) The applicant shall participate in a data collection network established and administered by the Department or its designee. The data may include, but is not limited to annual budget and cost information, operating schedules, throughout schedules, demographic and diagnostic information, and the volume of care provided to patients from all payor sources, as well as other data requested by the Department or its designee and approved by the Commission. The applicant shall provide the required data in a format established by the Department and in a mutually agreed upon media no later than 30 days following the last day of the quarter for which data are being reported to the Department. An applicant shall be considered in violation of this term of approval if the required data are not submitted to the Department within 30 days following the last day of the quarter for which data are being reported. However, the Department shall allow an applicant up to an additional 60 days to submit the required data if reasonable efforts are made by an applicant to provide the required data. The Department may elect to verify the data through on-site review of appropriate records. Data for an MRI unit approved pursuant to Section 9(1) or Section 10 shall be reported separately.

(iv) The operation of and referral of patients to the MRI unit shall be in conformance with 1978 PA 368, Sec. 16221, as amended by 1986 PA 319; MCL 333.16221; MSA 14.15 (16221).

(e)(i) The applicant shall provide the Department with a notice stating the first date on which the MRI unit became operational, and such notice shall be submitted to the Department consistent with applicable statute and promulgated rules.

(ii) An applicant who is a central service coordinator shall notify the Department of any additions, deletions, or changes in the host sites of each approved mobile MRI unit within 10 days after the change(s) in host sites is made.

(2) An applicant for an MRI unit under Section 9(1) shall agree that the services provided by the MRI unit approved pursuant to Section 9(1) shall be delivered in compliance with the following terms of CON approval:

(a) The capital and operating costs relating to the research use of the MRI unit approved pursuant to Section 9(1) shall be charged only to a specific research account(s) and not to any patient or third-party payor.

(b) The MRI unit approved pursuant to Section 9(1) shall not be used for any purposes other than as approved by the institutional review board unless the applicant has obtained CON approval for the MRI unit pursuant to Part 222 and these standards, other than Section 9.

(3) The agreements and assurances required by this section shall be in the form of a certification authorized by the owner or governing body of the applicant.

(4) An applicant approved to initiate a fixed MRI service pursuant to Section 3(4) of these standards shall cease operation as a host site and not become a host site for at least 12 months from the date the fixed service and its unit becomes operational.

Section 13. MRI procedure adjustments

Sec. 13. (1) The Department shall apply the following formula, as applicable, to determine the number of MRI adjusted procedures that are performed by an existing MRI service or unit:

(a) The base value for each MRI procedure is 1.0.

(b) For each MRI visit involving a pediatric patient, 0.25 shall be added to the base value.

(c) For each MRI visit involving an inpatient, 0.50 shall be added to the base value.

(d) For each MRI procedure performed on a sedated patient, 0.75 shall be added to the base value.

(e) For each MRI procedure performed on a re-sedated patient, 0.25 shall be added to the base value.

(f) For each MRI procedure performed on a special needs patient, 0.25 shall be added to the base value.

(g) For each MRI visit that involves both a clinical and research scan on a single patient in a single visit, 0.25 shall be added to the base value.

(h) For each contrast MRI procedure performed after use of a contrast agent, and not involving a procedure before use of a contrast agent, 0.35 shall be added to the base value.

(i) For each contrast MRI procedure involving a procedure before and after use of a contrast agent, 1.0 shall be added to the base value.

(j) For each MRI procedure performed at a teaching facility, 0.15 shall be added to the base value.

(k) The results of subsections (a) through (j) shall be summed, and that sum shall represent an MRI adjusted procedure.

(2) The Department shall apply not more than one of the adjustment factors set forth in this subsection, as applicable, to the number of MRI procedures adjusted in accordance with the applicable provisions of subsection (1) that are performed by an existing MRI service or unit.

(a) For a site located in a rural or micropolitan statistical area county, the number of MRI adjusted procedures shall be multiplied by a factor of 1.4.

(b) For a mobile MRI unit that serves hospitals and other host sites located in rural, micropolitan statistical area, and metropolitan statistical area counties, the number of MRI adjusted procedures for a site located in a rural or micropolitan statistical area county, shall be multiplied by a factor of 1.4 and for a site located in a metropolitan statistical area county, the number of MRI adjusted procedures shall be multiplied by a factor of 1.0.

(c) For a mobile MRI unit that serves only sites located in rural or micropolitan statistical area counties, the number of MRI adjusted procedures shall be multiplied by a factor of 2.0.

(d) For a mobile MRI unit that serves only sites located in a health service area with one or fewer fixed MRI units and one or fewer mobile MRI units, the number of MRI adjusted procedures shall be multiplied by a factor of 3.5.

(e) Subsection (2) shall not apply to an application proposing a subsequent fixed MRI unit (second, third, etc.) at the same site.

(3) The number of MRI adjusted procedures performed by an existing MRI service is the sum of the results of subsections (1) and (2).

Section 14. Documentation of actual utilization

Sec. 14. Documentation of the number of MRI procedures performed by an MRI unit shall be substantiated by the Department utilizing data submitted by the applicant in a format and media specified by the Department and as verified for the 12-month period reported on the most recently published "Available MRI Adjusted Procedures List" as of the date an application is deemed complete by the Department. The number of MRI procedures actually performed shall be documented by procedure records and not by application of the methodology required in Section 15. The Department may elect to verify the data through on-site review of appropriate records.

Section 15. Methodology for computing the number of available MRI adjusted procedures

Sec. 15. (1) The number of available MRI adjusted procedures required pursuant to Section 3 or 4(2) of these standards shall be computed in accordance with the methodology set forth in this section. In applying the methodology, the following steps shall be taken in sequence, and data for the 12-month period reported on the most recently published "Available MRI Adjusted Procedures List," as of the date an application is deemed complete by the Department, shall be used:

(a) Identify the number of actual MRI adjusted procedures performed by each existing MRI service as determined pursuant to Section 13.

(i) For purposes of computing actual MRI adjusted procedures, MRI adjusted procedures performed on MRI units used exclusively for research and approved pursuant to Section 9(1) and dedicated pediatric MRI approved pursuant to Section 10 shall be excluded.

(ii) For purposes of computing actual MRI adjusted procedures, the MRI adjusted procedures, from the host site routes utilized to meet the requirements of Section 3(4)(d), shall be excluded beginning at the time the application is submitted and for three years from the date the fixed MRI unit becomes operational.

(iii) For purposes of computing actual MRI adjusted procedures, the MRI adjusted procedures utilized to meet the requirements of Section 4(1) shall be reduced by 8,000 and shall be excluded beginning at the time the application is submitted and for three years from the date the fixed MRI unit becomes operational.

(b) Identify the number of available MRI adjusted procedures, if any, for each existing MRI service as determined pursuant to Section 2(1)(c).

(c) Determine the number of available MRI adjusted procedures that each referring doctor may commit from each service to an application in accordance with the following:

(i) Divide the number of available MRI adjusted procedures identified in subsection (b) for each service by the number of actual MRI adjusted procedures identified in subsection (a) for that existing MRI service.

(ii) For each doctor referring to that existing service, multiply the number of actual MRI adjusted procedures that the referring doctor made to the existing MRI service by the applicable proportion obtained by the calculation in subdivision (c)(i).

(A) For each doctor, subtract any available adjusted procedures previously committed. The total for each doctor cannot be less than zero.

(b) the total number of available adjusted procedures for that service shall be the sum of the results of (a) above.

(iii) for each mri service, the available mri adjusted procedures resulting from the calculation in (ii) above shall be sorted in descending order by the available mri adjusted procedures for each doctor. Then any duplicate values shall be sorted in descending order by the doctors' license numbers (last 6 digits only).

(iv) using the data produced in iii above, sum the number of available adjusted procedures in descending order until the summation equals at least 75 percent of the total available adjusted Procedures. This summation shall include the minimum number of doctors necessary to reach the 75 percent level.

(v) for the doctors representing 75 percent of the total available adjusted procedures in (iv) above, sum the available adjusted procedures.

(vi) for the doctors used in subsection (v) above, divide the total number of available adjusted procedures identified in (b) above by the sum of those available adjusted procedures produced in (v) above.

(vii) for only those doctors identified in (v) above, multiply the result of (vi) above by the available adjusted procedures calculated in (c)(ii)(a) above.

(viii) the result shall be the "available mri adjusted procedures list."

(2) after publication of the "available mri adjusted procedures list" resulting from (1) above, the data shall be updated to account for a) doctor commitments of available mri adjusted procedures in subsequent mri con applications and b) mri adjusted procedures used in subsequent mri con applications received in which applicants apply for fixed mri services pursuant to section 3(4).

Section 16. Procedures and requirements for commitments of available mri adjusted procedures

sec. 16. (1) if one or more host sites on a mobile mri service are located within the planning area of the proposed site, the applicant may access available mri adjusted procedures from the entire mobile mri service.

(2)(a) at the time the application is submitted to the department, the applicant shall submit a signed data commitment, on a form provided by the department in response to the applicant's letter of intent or at the applicant's discretion, on a more current form subsequently provided by the department, for each doctor committing available MRI adjusted procedures to that application for a new or additional MRI unit pursuant to Section 3 or Section 4(2), respectively.

(b) An applicant also shall submit, at the time the application is filed with the Department, a computer file that lists, for each MRI service from which data are being committed to the same application, the name and license number of each doctor for whom a signed and dated data commitment form is submitted.

(i) The computer file shall be provided to the Department on mutually agreed upon media and in a format prescribed by the Department.

(ii) If the doctor commitments submitted on the Departmental forms do not agree with the data on the computer file, the applicant shall be allowed to correct only the computer file data which includes adding physician commitments that were submitted at the time of application.

(c) If the required documentation for the doctor commitments submitted under this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

(3) The Department shall consider a data commitment, on a form provided by the Department in response to the applicant's letter of intent or at the applicant's discretion, on a more current form subsequently provided by the Department, submitted by the applicant in support of its application, that meets the requirements of each of the following, as applicable:

(a) A committing doctor certifies that 100% of his or her available MRI adjusted procedures for each specified MRI service, calculated pursuant to Section 15, is being committed and specifies the CON application number, for the new fixed or mobile MRI unit or for the additional mobile MRI unit proposed to be located within the planning area, to which the data commitment is made. A doctor shall not be required to commit available MRI adjusted procedures from all MRI services to which his or her patients are referred for MRI services but only from those MRI services specified by the doctor in the data commitment form provided by the Department and submitted by the applicant in support of its application.

(b) A committing doctor certifies that he or she does not have an ownership interest, either direct or indirect, in the applicant entity, except that this requirement shall not apply if the applicant entity is a group practice of which the committing doctor is a member.

(c) A committing doctor certifies that he or she has not been provided, or received a promise of being provided, a financial incentive to commit any of his or her available MRI adjusted procedures to the application.

(4)(a) The Department shall not consider a data commitment from a doctor for available MRI adjusted procedures from a specific MRI service if the available MRI adjusted procedures from that specific MRI service were used to support approval of an application for a new or additional MRI unit, pursuant to Section 3 or 4(2), respectively, for which a final decision to approve has been issued by the Director of the Department until either of the following occurs:

(i) The approved CON is withdrawn or expires.

(ii) The MRI service or unit to which the data were committed has been in operation for at least 36 continuous months.

(b) The Department shall not consider a data commitment from a doctor for available MRI adjusted procedures from a specific MRI service if the available MRI adjusted procedures from that specific MRI service were used to support an application for a new fixed or mobile MRI unit or additional mobile MRI unit pursuant to Section 3 or 4(2), respectively, for which a final decision to disapprove was issued by the Director of the Department until either of the following occurs:

(i) A final decision to disapprove an application is issued by the Director and the applicant does not appeal that disapproval or

(ii) If an appeal was made, either that appeal is withdrawn by the applicant or the committing doctor withdraws his or her data commitment pursuant to the requirements of subsection (8).

(5) The Department shall not consider a data commitment from a committing doctor for available MRI adjusted procedures from the same MRI service if that doctor has submitted a signed data commitment, on a form provided by Department, for more than one (1) application for which a final decision has not been issued by the Department. If the Department determines that a doctor has submitted a signed data commitment for the same available MRI adjusted procedures from the same MRI service to more than one CON application pending a final decision for a new fixed or mobile MRI unit or additional mobile MRI unit pursuant to Section 3 or 4(2), respectively, the Department shall,

(a) if the applications were filed on the same designated application date, notify all applicants, simultaneously and in writing, that one or more doctors have submitted data commitments for available MRI adjusted procedures from the same MRI service and that the doctors' data from the same MRI service shall not be considered in the review of any of the pending applications filed on the same designated application date until the doctor notifies the Department, in writing, of the one (1) application for which the data commitment shall be considered.

(b) if the applications were filed on different designated application dates, consider the data commitment submitted in the application filed on the earliest designated application date and shall notify, simultaneously in writing, all applicants of applications filed on designated application dates subsequent to the earliest date that one or more committing doctors have submitted data commitments for available MRI adjusted procedures from the same MRI service and that the doctors' data shall not be considered in the review of the application(s) filed on the subsequent designated application date(s).

(6) The Department shall not consider any data commitment submitted by an applicant after the date an application is deemed complete unless an applicant is notified by the Department, pursuant to subsection (5), that one or more committing doctors submitted data commitments for available MRI adjusted procedures from the same MRI service. If an applicant is notified that one or more doctors' data commitments will not be considered by the Department, the Department shall consider data commitments submitted after the date an application is deemed complete only to the extent necessary to replace the data commitments not being considered pursuant to subsection (5).

(7) In accordance with either of the following, the Department shall not consider a withdrawal of a signed data commitment

(a) during the 120-day period following the date on which the Department's review of an application commences.

(b) after a proposed decision to approve an application has been issued by the Department.

(8) The Department shall consider a withdrawal of a signed data commitment if a committing doctor submits a written notice to the Department, that specifies the CON application number and the specific MRI services for which a data commitment is being withdrawn, and if an applicant demonstrates that the requirements of subsection (7) also have been met.

Section 17. Lists of MRI adjusted procedures published by the Department

Sec. 17. (1) At a minimum, on or before May 1 and November 1 of each year, the Department shall publish the following lists:

(a) A list, known as the "MRI Service Utilization List," of all MRI services in Michigan that includes at least the following for each MRI service:

(i) The number of actual MRI adjusted procedures;

(ii) The number of available MRI adjusted procedures, if any; and

(iii) The number of MRI units, including whether each unit is a clinical unit or an MRI unit used exclusively for research.

(b) A list, known as the "Available MRI Adjusted Procedures List," that identifies each MRI service that has available MRI adjusted procedures and includes at least the following:

(i) The number of available MRI adjusted procedures;

(ii) The name, address, and license number of each referring doctor, identified in Section 15(1)(c)(v), whose patients received MRI services at that MRI service; and

(iii) The number of available MRI adjusted procedures performed on patients referred by each referring doctor, identified in Section 15(1)(c)(v), and if any are committed to an MRI service. This number shall be calculated in accordance with the requirements of Section 15(1). A referring doctor may have fractional portions of available MRI adjusted procedures.

(c) For the lists published pursuant to subsections (a) or (b), the May 1 list will report 12 months of data from the previous January 1 through December 31 reporting period, and the November 1 list will report 12 months of data from the previous July 1 through June 30 reporting period. Copies of both lists shall be available upon request.

(d) The Department shall not be required to publish a list that sorts MRI database information by referring doctor, only by MRI service.

(2) When an MRI service begins to operate at a site at which MRI services previously were not provided, the Department shall include in the MRI database, data beginning with the second full quarter of operation of the new MRI service. Data from the start-up date to the start of the first full quarter will not be collected to allow a new MRI service sufficient time to develop its data reporting capability. Data from the first full quarter of operation will be submitted as test data but will not be reported in the lists published pursuant to this section.

(3) In publishing the lists pursuant to subsections (a) and (b), if an MRI service has not reported data in compliance with the requirements of Section 12(1)(d)(iii), the Department shall indicate on both lists that the MRI service is in violation of the requirements set forth in Section 12(1)(d)(iii), and no data will be shown for that service on either list.

(4) In the case of an MRI service at which MRI services previously were not provided, the Department may use annualized data from at least a consecutive six-month period in publishing the lists pursuant to subsections (a) and (b).

Section 18. Effect on prior CON Review Standards; Comparative reviews

Sec. 18. (1) These CON review standards supersede and replace the CON Review Standards for Magnetic Resonance Imaging Services approved by the CON Commission on June 22, 2005 and effective October 17, 2005.

(2) Projects reviewed under these standards shall not be subject to comparative review.

Section 19. Health Service Areas

Sec. 19. Counties assigned to each of the health service areas are as follows:

HSA	COUNTIES		
1	Livingston	Monroe	St. Clair
	Macomb	Oakland	Washtenaw
	Wayne		
2	Clinton	Hillsdale	Jackson

	Eaton	Ingham	Lenawee
3	Barry	Calhoun	St. Joseph
	Berrien	Cass	Van Buren
	Branch	Kalamazoo	
4	Allegan	Mason	Newaygo
	Ionia	Mecosta	Oceana
	Kent	Montcalm	Osceola
	Lake	Muskegon	Ottawa
5	Genesee	Lapeer	Shiawassee
6	Arenac	Huron	Roscommon
	Bay	Iosco	Saginaw
	Clare	Isabella	Sanilac
	Gladwin	Midland	Tuscola
	Gratiot	Ogemaw	
7	Alcona	Crawford	Missaukee
	Alpena	Emmet	Montmorency
	Antrim	Gd Traverse	Oscoda
	Benzie	Kalkaska	Otsego
	Charlevoix	Leelanau	Presque Isle
	Cheboygan	Manistee	Wexford
8	Alger	Gogebic	Mackinac
	Baraga	Houghton	Marquette
	Chippewa	Iron	Menominee
	Delta	Keweenaw	Ontonagon
	Dickinson	Luce	Schoolcraft

CON REVIEW STANDARDS FOR MRI SERVICES

Rural Michigan counties are as follows:

Alcona	Hillsdale	Ogemaw
Alger	Huron	Ontonagon
Antrim	Iosco	Osceola
Arenac	Iron	Oscoda
Baraga	Lake	Otsego
Charlevoix	Luce	Presque Isle
Cheboygan	Mackinac	Roscommon
Clare	Manistee	Sanilac
Crawford	Mason	Schoolcraft
Emmet	Montcalm	Tuscola

Gladwin	Montmorency
Gogebic	Oceana

Micropolitan statistical area Michigan counties are as follows:

Allegan	Gratiot	Mecosta
Alpena	Houghton	Menominee
Benzie	Isabella	Midland
Branch	Kalkaska	Missaukee
Chippewa	Keweenaw	St. Joseph
Delta	Leelanau	Shiawassee
Dickinson	Lenawee	Wexford
Grand Traverse	Marquette	

Metropolitan statistical area Michigan counties are as follows:

Barry	Ionia	Newaygo
Bay	Jackson	Oakland
Berrien	Kalamazoo	Ottawa
Calhoun	Kent	Saginaw
Cass	Lapeer	St. Clair
Clinton	Livingston	Van Buren
Eaton	Macomb	Washtenaw
Genesee	Monroe	Wayne
Ingham	Muskegon	

Source:

65 F.R., p. 82238 (December 27, 2000)
Statistical Policy Office
Office of Information and Regulatory Affairs
United States Office of Management and Budget

CERTIFICATE OF NEED REVIEW STANDARDS

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

CERTIFICATE OF NEED (CON) REVIEW STANDARDS FOR HOSPITAL BEDS

(By authority conferred on the CON Commission by sections 22215 and 22217 of Act No. 368 of the Public Acts of 1978, as amended, and sections 7 and 8 of Act No. 306 of the Public Acts of 1969, as amended, being sections 333.22215, 333.22217, 24.207, and 24.208 of the Michigan Compiled Laws.)

Section 1. Applicability

Sec. 1. (1) These standards are requirements for approval and delivery of services for all projects approved and certificates of need issued under Part 222 of the Code that involve (a) increasing licensed beds in a hospital licensed under Part 215 or (b) physically relocating hospital beds from one licensed site to another geographic location or (c) replacing beds in a hospital or (d) acquiring a hospital or (e) beginning operation of a new hospital.

(2) A hospital licensed under Part 215 is a covered health facility for purposes of Part 222 of the Code.

(3) An increase in licensed hospital beds is a change in bed capacity for purposes of Part 222 of the Code.

(4) The physical relocation of hospital beds from a licensed site to another geographic location is a change in bed capacity for purposes of Part 222 of the Code.

(5) An increase in hospital beds certified for long-term care is a change in bed capacity for purposes of Part 222 of the Code and shall be subject to and reviewed under the CON Review Standards for Long-Term-Care Services.

(6) The Department shall use sections 3, 4, 5, 6, 7, 8, 10, 16, and 17 of these standards and Section 2 of the Addendum for Projects for HIV Infected Individuals, as applicable, in applying Section 22225(1) of the Code, being Section 333.22225(1) of the Michigan Compiled Laws.

(7) The Department shall use Section 9 of these standards and Section 3 of the Addendum for Projects for HIV Infected Individuals, as applicable, in applying Section 22225(2)(c) of the Code, being Section 333.22225(2)(c) of the Michigan Compiled Laws.

Section 2. Definitions

Sec. 2. (1) As used in these standards:

(a) "Acquiring a hospital" means the issuance of a new hospital license as the result of the acquisition (including purchase, lease, donation, or other comparable arrangements) of a hospital with a valid license and which does not involve a change in bed capacity.

(b) "Alcohol and substance abuse hospital," for purposes of these standards, means a licensed hospital within a long-term (acute) care hospital that exclusively provides inpatient medical detoxification and medical stabilization and related outpatient services for persons who have a primary diagnosis of substance dependence covered by DRGs 433 - 437.

(c) "Base year" means the most recent year that final MIDB data is available to the Department unless a different year is determined to be more appropriate by the Commission.

(d) "Certificate of Need Commission" or "Commission" means the Commission created pursuant to Section 22211 of the code, being Section 333.22211 of the Michigan Compiled Laws.

(e) "Close a hospital" means an applicant will demonstrate to the satisfaction of the Department that a hospital licensed under Part 215, and whose licensed capacity for the most recent 24 months prior to
submission of the application was at least 80 percent for acute care beds, will close and surrender its acute care hospital license upon completion of the proposed project.

(f) "Code" means Act No. 368 of the Public Acts of 1978, as amended, being Section 333.1101 et seq. of the Michigan Compiled Laws.

(g) "Common ownership or control" means a hospital that is owned by, is under common control of, or has a common parent as the applicant hospital.

(h) "Compare group" means the applications that have been grouped for the same type of project in the same subarea and are being reviewed comparatively in accordance with the CON rules.

(i) "Department" means the Michigan Department of Community Health (MDCH).

(j) "Department inventory of beds" means the current list maintained for each hospital subarea on a continuing basis by the Department of (i) licensed hospital beds and (ii) hospital beds approved by a valid CON issued under either Part 221 or Part 222 of the Code that are not yet licensed. The term does not include hospital beds certified for long-term-care in hospital long-term care units.

(k) "Discharge relevance factor" (%R) means a mathematical computation where the numerator is the inpatient hospital discharges from a specific zip code for a specified hospital subarea and the denominator is the inpatient hospital discharges for any hospital from that same specific zip code.

(l) "Disproportionate share hospital payments" means the most recent payments to hospitals in the special pool for non-state government-owned or operated hospitals to assure funding for costs incurred by public facilities providing inpatient hospital services which serve a disproportionate number of low-income patients with special needs as calculated by the Medical Services Administration within the Department.

(m) "Existing hospital beds" means, for a specific hospital subarea, the total of all of the following: (i) hospital beds licensed by the Department; (ii) hospital beds with valid CON approval but not yet licensed; (iii) proposed hospital beds under appeal from a final decision of the Department; and (iv) proposed hospital beds that are part of a completed application under Part 222 (other than the application under review) for which a proposed decision has been issued and which is pending final Department decision.

(n) "Gross hospital revenues" means the hospital's revenues as stated on the most recent Medicare and Michigan Medicaid forms filed with the Medical Services Administration within the Department.

(o) "Health service area" OR "HSA" means the groups of counties listed in Section 18.

(p) "Hospital bed" means a bed within the licensed bed complement at a licensed site of a hospital licensed under Part 215 of the Code, excluding (i) hospital beds certified for long-term care as defined in Section 20106(6) of the Code and (ii) unlicensed newborn bassinets.

(q) "Hospital" means a hospital as defined in Section 20106(5) of the Code being Section 333.20106(5) of the Michigan Compiled Laws and licensed under Part 215 of the Code. The term does not include a hospital or hospital unit licensed or operated by the Department of Mental Health.

(r) "Hospital long-term-care unit" or "HLTCU" means a nursing care unit, owned or operated by and as part of a hospital, licensed by the Department, and providing organized nursing care and medical treatment to 7 or more unrelated individuals suffering or recovering from illness, injury, or infirmity.

(s) "Hospital subarea" or "subarea" means a cluster or grouping of hospitals and the relevant portion of the state's population served by that cluster or grouping of hospitals. For purposes of these standards, hospital subareas and the hospitals assigned to each subarea are set forth in Appendix A.

(t) "Host hospital," for purposes of these standards, means an existing licensed hospital, which delicenses hospital beds, and which leases patient care space and other space within the physical plant of the host hospital, to allow a long-term (acute) care hospital, or alcohol and substance abuse hospital, to begin operation.

(u) "Licensed site" means either (i) in the case of a single site hospital, the location of the facility authorized by license and listed on that licensee's certificate of licensure or (ii) in the case of a hospital with multiple sites, the location of each separate and distinct inpatient unit of the health facility as authorized by license and listed on that licensee's certificate of licensure.

(v) "Limited access area" means those geographic areas containing a population of 50,000 or more based on the planning year and not within 30 minutes drive time of an existing licensed acute care hospital with 24 hour/7 days a week emergency services utilizing the slowest route available as defined by the Michigan Department of Transportation (MDOT) and as identified in Appendix E. Limited access areas shall be redetermined when a new hospital has been approved or an existing hospital closes.

(w) "Long-term (acute) care hospital," for purposes of these standards, means a hospital has been approved to participate in the Title XVIII (Medicare) program as a prospective payment system (PPS) exempt hospital in accordance with 42 CFR Part 412.

(x) "Market forecast factors" (%N) means a mathematical computation where the numerator is the number of total inpatient discharges indicated by the market survey forecasts and the denominator is the base year MIDB discharges.

(y) "Medicaid" means title XIX of the social security act, chapter 531, 49 Stat. 620, 1396r-6 and1396r-8 to 1396v.

(z) "Medicaid volume" means the number of Medicaid recipients served at the hospital as stated on the most recent Medicare and Michigan Medicaid forms filed with the Medical Services Administration within the Department.

(aa) "Metropolitan statistical area county" means a county located in a metropolitan statistical area as that term is defined under the "standards for defining metropolitan and micropolitan statistical areas" by the statistical policy office of the office of information and regulatory affairs of the United States office of management and budget, 65 F.R. p. 82238 (December 27, 2000) and as shown in Appendix B.

(bb) "Michigan Inpatient Data Base" or "MIDB" means the data base compiled by the Michigan Health and Hospital Association or successor organization. The data base consists of inpatient discharge records from all Michigan hospitals and Michigan residents discharged from hospitals in border states for a specific calendar year.

(cc) "Micropolitan statistical area county" means a county located in a micropolitan statistical area as that term is defined under the "standards for defining metropolitan and micropolitan statistical areas" by the statistical policy office of the office of information and regulatory affairs of the United States office of management and budget, 65 F.R. p. 82238 (December 27, 2000) and as shown in Appendix B.

(dd) "New beds in a hospital" means hospital beds that meet at least one of the following: (i) are not currently licensed as hospital beds, (ii) are currently licensed hospital beds at a licensed site in one subarea which are proposed for relocation in a different subarea as determined by the Department pursuant to Section 3 of these standards, (iii) are currently licensed hospital beds at a licensed site in one subarea which are proposed for relocation to another geographic site which is in the same subarea as determined by the Department, but which are not in the replacement zone, or (iv) are currently licensed hospital beds that are proposed to be licensed as part of a new hospital in accordance with Section 6(2) of these standards.

(ee) "New hospital" means one of the following: (i) the establishment of a new facility that shall be issued a new hospital license, (ii) for currently licensed beds, the establishment of a new licensed site that is not in the same hospital subarea as the currently licensed beds, (iii) currently licensed hospital beds at a licensed site in one subarea which are proposed for relocation to another geographic site which is in the same subarea as determined by the Department, but which are not in the replacement zone, or (iv) currently licensed hospital beds that are proposed to be licensed as part of a new hospital in accordance with section 6(2) of these standards.

(ff) "Obstetrics patient days of care" means inpatient days of care for patients in the applicant's Michigan Inpatient Data Base data ages 15 through 44 with drgs 370 through 375 (obstetrical discharges).

(gg) "Overbedded subarea" means a hospital subarea in which the total number of existing hospital beds in that subarea exceeds the subarea needed hospital bed supply as set forth in Appendix C.

(hh) "Pediatric patient days of care" means inpatient days of care for patients in the applicant's Michigan Inpatient Data Base data ages 0 through 14 excluding normal newborns.

(ii) "Planning year" means five years beyond the base year, established by the CON Commission, for which hospital bed need is developed, unless a different year is determined to be more appropriate by the Commission.

(jj) "Qualifying project" means each application in a comparative group which has been reviewed individually and has been determined by the Department to have satisfied all of the requirements of Section 22225 of the code, being section 333.22225 of the Michigan Compiled Laws and all other applicable requirements for approval in the Code or these Standards.

(kk) "Relevance index" or "market share factor" (%Z) means a mathematical computation where the numerator is the number of inpatient hospital patient days provided by a specified hospital subarea from a specific zip code and the denominator is the total number of inpatient hospital patient days provided by all hospitals to that specific zip code using MIDB data.

(ll) "Relocate existing licensed hospital beds" for purposes of sections 6(3) and 8 of these standards, means a change in the location of existing hospital beds from the existing licensed hospital site to a different existing licensed hospital site within the same hospital subarea or HSA. This definition does not apply to projects involving replacement beds in a hospital governed by Section 7 of these standards.

(mm) "remaining patient days of care" means total inpatient days of care in the applicant's Michigan Inpatient Data Base data minus obstetrics patient days of care and pediatric patient days of care.

(nn) "Replacement beds in a hospital" means hospital beds that meet all of the following conditions; (i) an equal or greater number of hospital beds are currently licensed to the applicant at the licensed site at which the proposed replacement beds are currently licensed; (ii) the hospital beds are proposed for replacement in new physical plant space being developed in new construction or in newly acquired space (purchase, lease, donation, etc.); and (iii) the hospital beds to be replaced will be located in the replacement zone.

(oo) "Replacement zone" means a proposed licensed site that is (i) in the same subarea as the existing licensed site as determined by the Department in accord with Section 3 of these standards and (ii) on the same site, on a contiguous site, or on a site within 2 miles of the existing licensed site if the existing licensed site is located in a county with a population of 200,000 or more, or on a site within 5 miles of the existing licensed site if the existing licensed site is located in a county with a population of less than 200,000.

(pp) "Rural county" means a county not located in a metropolitan statistical area or micropolitan statistical areas as those terms are defined under the "standards for defining metropolitan and micropolitan statistical areas" by the statistical policy office of the office of information regulatory affairs of the United States office of management and budget, 65 F.R. p. 82238 (December 27, 2000) and as shown in Appendix B.

(qq) "Uncompensated care volume" means the hospital's uncompensated care volume as stated on the most recent Medicare and Michigan Medicaid forms filed with the Medical Services Administration within the Department.

(rr) "Utilization rate" or "use rate" means the number of days of inpatient care per 1,000 population during a one-year period.

(ss) "Zip code population" means the latest population estimates for the base year and projections for the planning year, by zip code.

(2) The definitions in Part 222 shall apply to these standards.

Section 3. Hospital subareas

Sec. 3. (1)(a) Each existing hospital is assigned to a hospital subarea as set forth in Appendix A which is incorporated as part of these standards, until Appendix A is revised pursuant to this subsection.

(i) These hospital subareas, and the assignments of hospitals to subareas, shall be updated, at the direction of the Commission, starting in May 2003, to be completed no later than November 2003. Thereafter, at the direction of the Commission, the updates shall occur no later than two years after the official date of the federal decennial census, provided that:

(A) Population data at the federal zip code level, derived from the federal decennial census, are available; and final MIDB data are available to the Department for that same census year.

(b) For an application involving a proposed new licensed site for a hospital (whether new or replacement), the proposed new licensed site shall be assigned to an existing hospital subarea utilizing a market survey conducted by the applicant and submitted with the application. The market survey shall provide, at a minimum, forecasts of the number of inpatient discharges for each zip code that the proposed new licensed site shall provide service. The forecasted numbers must be for the same year as the base year MIDB data. The market survey shall be completed by the applicant using accepted standard statistical methods. The market survey must be submitted on a computer media and in a format specified by the Department. The market survey, if determined by the Department to be reasonable pursuant to Section 15, shall be used by the Department to assign the proposed new site to an existing subarea based on the methodology described by "The Specification of Hospital Service Communities in a Large Metropolitan Area" by J. William Thomas, Ph.D., John R. Griffith, and Paul Durance, April 1979 as follows:

(i) For the proposed new site, a discharge relevance factor for each of the zip codes identified in the application will be computed. Zip codes with a market forecast factor of less than .05 will be deleted from consideration.

(ii) The base year MIDB data will be used to compute discharge relevance factors (%Rs) for each hospital subarea for each of the zip codes identified in step (i) above. Hospital subareas with a %R of less than .10 for all zip codes identified in step (i) will be deleted from the computation.

(iii) The third step in the methodology is to calculate a population-weighted average discharge relevance factor $\overline{R}_j$ for the proposed hospital and existing subareas. Letting:

P_i = Population of zip code i.

d_{ij} = Number of patients from zip code i treated at hospital j.

$D_i = \sum_j d_{ij}$ = Total patients from zip code i.

$I_j = \{i|(d_{ij}/D_i) \geq \alpha\}$, set of zip codes for which the individual relevance factor [%R from (i) and (ii) above) values (d_{ij}/D_i) of hospital j exceeds or equals α, where α is specified $0 \leq \alpha \geq 1$.

then $\overline{R}_j = \dfrac{\sum_{i \varepsilon Ij} P_i (d_{ij}/D_i)}{\sum_{i \varepsilon Ij} P_i}$

(iv) After $\overline{R}_j$ is calculated for the applicant(s) and the included existing subareas, the hospital/subarea with the smallest $\overline{R}_j$ ($S\overline{R}_j$) is grouped with the hospital/subarea having the greatest individual discharge relevance factor in the $S\overline{R}j$'s home zip code. $S\overline{R}j$'s home zip code is defined as the zip code from $S\overline{R}j$'s with the greatest discharge relevance factor.

(v) If there is only a single applicant, then the assignment procedure is complete. If there are additional applicants, then steps (iii), and (iv) must be repeated until all applicants have been assigned to an existing subarea.

(2) The Commission shall amend Appendix A to reflect: (a) approved new licensed site(s) assigned to a specific hospital subarea; (b) hospital closures; and (c) licensure action(s) as appropriate.

(3) As directed by the Commission, new sub-area assignments established according to subsection (1)(a)(i) shall supersede Appendix A and shall be included as an amended appendix to these standards effective on the date determined by the Commission.

Section 4. Determination of the needed hospital bed supply

Sec. 4. (1) The determination of the needed hospital bed supply for a limited access area and a hospital subarea for a planning year shall be made using the MIDB and population estimates and projections by zip code in the following methodology:

(a) All hospital discharges for normal newborns (DRG 391) and psychiatric patients (ICD-9-CM codes 290 through 319 as a principal diagnosis) will be excluded.

(b) For each discharge from the selected zip codes for a limited access area or each hospital subarea discharge, as applicable, calculate the number of patient days (take the patient days for each discharge and accumulate it within the respective age group) for the following age groups: ages 0 (excluding normal newborns) through 14 (pediatric), ages 15 through 44, female ages 15 through 44 (DRGs 370 through 375 – obstetrical discharges), ages 45 through 64, ages 65 through 74, and ages 75 and older. Data from non-Michigan residents are to be included for each specific age group. For limited access areas, proceed to section 4(1)(e).

(c) For each hospital subarea, calculate the relevance index (%Z) for each zip code and for each of the following age groups: ages 0 (excluding normal newborns) through 14 (pediatric), ages 15 through 44, female ages 15 through 44 (DRGs 370 THROUGH 375 – obstetrical discharges), ages 45 through 64, ages 65 through 74, and ages 75 and older.

(d) For each hospital subarea, multiply each zip code %Z calculated in (c) by its respective base year zip code and age group specific year population. The result will be the zip code allocations by age group for each subarea.

(e) For each limited access area or hospital subarea, as applicable, calculate the subarea base year population by age group by adding together all zip code population allocations calculated in (d) for each specific age group in that subarea. For a limited access area, add together the age groups identified for the limited access area. The result will be six population age groups for each limited access area or subarea, as applicable.

(f) For each limited access area or hospital subarea, as applicable, calculate the patient day use rates for ages 0 (excluding normal newborns) through 14 (pediatric), ages 15 through 44, female ages 15 through 44 (DRGs 370 through 375 – obstetrical discharges), ages 45 through 64, ages 65 through 74, and ages 75 and older by dividing the results of (b) by the results of (e).

(g) For each hospital subarea, multiply each zip code %Z calculated in (c) by its respective planning year zip code and age group specific year population. The results will be the projected zip code allocations by age group for each subarea. For a limited access area, multiply the population projection for the plan year by the proportion of the zip code that is contained within the limited access area for each zip code age group. The results will be the projected zip code allocations by age group for each zip code within the limited access area.

(h) For each hospital subarea, calculate the subarea projected year population by age group by adding together all projected zip code population allocations calculated in (g) for each specific age group. For a limited access area, add together the zip code allocations calculated in (g) by age group identified for the limited access area. The result will be six population age groups for each limited access area or subarea, as applicable.

(i) For each limited access area or hospital subarea, as applicable, calculate the limited access area or hospital subarea, as applicable, projected patient days for each age group by multiplying the six projected populations by age group calculated in step (h) by the age specific use rates identified in step (f).

(j) For each limited access area or hospital subarea, as applicable, calculate the adult medical/surgical limited access area or hospital subarea, as applicable, projected patient days by adding together the following age group specific projected patient days calculated in (i): ages 15 through 44, ages 45 through 64, ages 65 through 74, and ages 75 and older. The 0 (excluding normal newborns) through 14 (pediatric) and female ages 15 through 44 (DRGs 370 through 375 – obstetrical discharges) age groups remain unchanged as calculated in (i).

(k) For each limited access area or hospital subarea, as applicable, calculate the limited access area or hospital subarea, as applicable, projected average daily census (ADC) for three age groups: Ages 0 (excluding normal newborns) through 14 (pediatric), female ages 15 through 44 (DRGs 370 through 375 – obstetrical discharges), and adult medical surgical by dividing the results calculated in (j) by 365 (or 366 if the planning year is a leap year). Round each ADC to a whole number. This will give three ADC computations per limited access area or subarea, as applicable.

(l) For each limited access area or hospital subarea, as applicable, and age group, select the appropriate occupancy rate from the occupancy rate table in Appendix D.

(m) For each limited access area or hospital subarea, as applicable, and age group, calculate the limited access area or subarea, as applicable, projected bed need number of hospital beds for the limited access area or subarea, as applicable, by age group by dividing the ADC calculated in (k) by the

appropriate occupancy rate determined in (l). To obtain the total limited access area or hospital, as applicable, bed need, add the three age group bed projections together. Round any part of a bed up to a whole bed.

Section 5. Bed Need

Sec. 5. (1) The bed-need numbers incorporated as part of these standards as Appendix C shall apply
to projects subject to review under these standards, except where a specific CON review standard states otherwise.

(2) The Commission shall direct the Department, effective November 2004 and every two years thereafter, to re-calculate the acute care bed need methodology in Section 4, within a specified time frame.

(3) The Commission shall designate the base year and the future planning year which shall be utilized in applying the methodology pursuant to subsection (2).

(4) When the Department is directed by the Commission to apply the methodology pursuant to subsection (2), the effective date of the bed-need numbers shall be established by the Commission.

(5) As directed by the Commission, new bed-need numbers established by subsections (2) and (3) shall supersede the bed-need numbers shown in Appendix C and shall be included as an amended appendix to these standards.

Section 6. Requirements for approval -- new beds in a hospital

Sec. 6. (1) An applicant proposing new beds in a hospital, except an applicant meeting the requirements of subsection 2, 3, 4, or 5 shall demonstrate that it meets all of the following:

(a) The new beds in a hospital shall result in a hospital of at least 200 beds in a metropolitan statistical area county or 50 beds in a rural or micropolitan statistical area county. This subsection may be waived by the Department if the Department determines, in its sole discretion, that a smaller hospital is necessary or appropriate to assure access to health-care services.

(b) The total number of existing hospital beds in the subarea to which the new beds will be assigned does not currently exceed the needed hospital bed supply as set forth in Appendix C. The Department shall determine the subarea to which the beds will be assigned in accord with Section 3 of these standards.

(c) Approval of the proposed new beds in a hospital shall not result in the total number of existing hospital beds, in the subarea to which the new beds will be assigned, exceeding the needed hospital bed supply as set forth in Appendix C. The Department shall determine the subarea to which the beds will be assigned in accord with Section 3 of these standards.

(2) An applicant proposing to begin operation as a new long-term (acute) care hospital or alcohol and substance abuse hospital within an existing licensed, host hospital shall demonstrate that it meets all of the requirements of this subsection:

(a) If the long-term (acute) care hospital applicant described in this subsection does not meet the Title XVIII requirements of the Social Security Act for exemption from PPS as a long-term (acute) care hospital within 12 months after beginning operation, then it may apply for a six-month extension in

accordance with R325.9403 of the CON rules. If the applicant fails to meet the Title XVIII requirements for PPS exemption as a long-term (acute) care hospital within the 12 or 18-month period, then the CON granted pursuant to this section shall expire automatically.

(b) The patient care space and other space to establish the new hospital is being obtained through a lease arrangement between the applicant and the host hospital. The initial, renewed, or any subsequent lease shall specify at least all of the following:

(I) that the host hospital shall delicense the same number of hospital beds proposed by the applicant for licensure in the new hospital.

(ii) That the proposed new beds shall be for use in space currently licensed as part of the host hospital.

(iii) That upon non-renewal and/or termination of the lease, upon termination of the license issued under Part 215 of the act to the applicant for the new hospital, or upon noncompliance with the project delivery requirements or any other applicable requirements of these standards, the beds licensed as part of the new hospital must be disposed of by one of the following means:

(A) Relicensure of the beds to the host hospital. The host hospital must obtain a CON to acquire the long-term (acute) care hospital. In the event that the host hospital applies for a CON to acquire the long-term (acute) care hospital [including the beds leased by the host hospital to the long-term (acute) care hospital] within six months following the termination of the lease with the long-term (acute) care hospital, it shall not be required to be in compliance with the hospital bed supply set forth in Appendix C if the host hospital proposes to add the beds of the long-term (acute) care hospital to the host hospital's medical/surgical licensed capacity and the application meets all other applicable project delivery requirements. The beds must be used for general medical/surgical purposes. Such an application shall not be subject to comparative review and shall be processed under the procedures for non-substantive review (as this will not be considered an increase in the number of beds originally licensed to the applicant at the host hospital);

(B) Delicensure of the hospital beds; or

(C) Acquisition by another entity that obtains a CON to acquire the new hospital in its entirety and that entity must meet and shall stipulate to the requirements specified in Section 6(2).

(c) The applicant or the current licensee of the new hospital shall not apply, initially or subsequently, for CON approval to initiate any other CON covered clinical services; provided, however, that this section is not intended, and shall not be construed in a manner which would prevent the licensee from contracting and/or billing for medically necessary covered clinical services required by its patients under arrangements with its host hospital or any other CON approved provider of covered clinical services.

(d) The new licensed hospital shall remain within the host hospital.

(e) The new hospital shall be assigned to the same subarea as the host hospital.

(f) The proposed project to begin operation of a new hospital, under this subsection, shall constitute a change in bed capacity under Section 1(3) of these standards.

(g) The lease will not result in an increase in the number of licensed hospital beds in the subarea.

(h) applications proposing a new hospital under this subsection shall not be subject to comparative review.

(3) an applicant proposing to add new hospital beds, as the receiving licensed hospital under section 8, shall demonstrate that it meets all of the requirements of this subsection and shall not be required to be in compliance with the needed hospital bed supply set forth in appendix c if the application meets all other applicable con review standards and agrees and assures to comply with all applicable project delivery requirements.

(a) the approval of the proposed new hospital beds shall not result in an increase in the number of licensed hospital beds as follows:

(i) in the subarea, or

(ii) in the hsa pursuant to section 8(2)(b).

(a) the receiving hospital shall meet the requirements of section 6(4)(b) of these standards.

(b) the proposed project to add new hospital beds, under this subsection, shall constitute a change in bed capacity under section 1(3) of these standards.

(c) applicants proposing to add new hospital beds under this subsection shall not be subject to comparative review.

(4) an applicant may apply for the addition of new beds if all of the following subsections are met. Further, an applicant proposing new beds at an existing licensed hospital site shall not be required to be in compliance with the needed hospital bed supply set forth in appendix c if the application meets all other applicable con review standards and agrees and assures to comply with all applicable project delivery requirements.

(a) the beds are being added at the existing licensed hospital site.

(b) the hospital at the existing licensed hospital site has operated at an adjusted occupancy rate of 80 percent or above for the previous, consecutive 24 months based on its licensed and approved hospital bed capacity. The adjusted occupancy rate shall be calculated as follows:

(i) combine all pediatric patient days of care and obstetrics patient days of care provided during the most recent, consecutive 24-month period for which verifiable data are available to the department and multiply that number by 1.1.

(ii) add remaining patient days of care provided during the most recent, consecutive 24-month period for which verifiable data are available to the department to the number calculated in (i) above. This is the adjusted patient days.

(iii) divide the number calculated in (ii) above by the total possible patient days [licensed and approved hospital beds multiplied by 730 (or 731 if including a leap year)]. This is the adjusted occupancy rate.

(c) the number of beds that may be approved pursuant to this subsection shall be the number of beds necessary to reduce the adjusted occupancy rate for the hospital to 75 percent. The number of beds shall be calculated as follows:

(i) divide the number of adjusted patient days calculated in subsection (b)(ii) by .75 to determine licensed bed days at 75 percent occupancy;

(ii) divide the result of step (i) by 730 (or 731 if including a leap year) and round the result up to the next whole number;

(iii) subtract the number of licensed and approved hospital beds as documented on the "department inventory of beds" from the result of step (ii) and round the result up to the next whole number to determine the maximum number of beds that may be approved pursuant to this subsection.

(d) a licensed acute care hospital that has relocated its beds, after the effective date of these standards, shall not be approved for hospital beds under this subsection for five years from the effective date of the relocation of beds.

(e) applicants proposing to add new hospital beds under this subsection shall not be subject to comparative review.

(f) applicants proposing to add new hospital beds under this subsection shall demonstrate to the department that they have pursued a good faith effort to relocate acute care beds from other licensed acute care hospitals within the hsa. At the time an application is submitted to the department, the applicant shall demonstrate that contact was made by one certified mail return receipt for each organization contacted.

(5) an applicant proposing a new hospital in a limited access area shall not be required to be in compliance with the needed hospital bed supply set forth in appendix c if the application meets all other applicable con review standards, agrees and assures to comply with all applicable project delivery requirements, and all of the following subsections are met.

(a) the proposed new hospital, unless a critical access hospital, shall have 24 hour/7 days a week emergency services, obstetrical services, surgical services, and licensed acute care beds.

(b) the department shall assign the proposed new hospital to an existing subarea based on the current market use patterns of existing subareas.

(c) approval of the proposed new beds in a hospital in a limited access area shall not exceed the bed need for the limited access area as determined by the bed need methodology in section 4 and as set forth in appendix e.

(d) the new beds in a hospital in a limited access area shall result in a hospital of at least 100 beds in a metropolitan statistical area county or 50 beds in a rural or micropolitan statistical area county. If the bed need for a limited access area, as shown in appendix e, is less, then that will be the minimum number of beds for a new hospital under this provision. If an applicant for new beds in a hospital under this provision simultaneously applies for status as a critical access hospital, the minimum hospital size shall be that number allowed under state/federal critical access hospital designation.

(e) applicants proposing to create a new hospital under this subsection shall not be approved, for a period of five years after beginning operation of the facility, of the following covered clinical services: (i) open heart surgery, (ii) therapeutic cardiac catheterization, (iii) fixed positron emission tomography (pet) services, (iv) all transplant services, (v) neonatal intensive care services/beds, and (vi) fixed urinary extracorporeal shock wave lithotripsy (ueswl) services.

(f) applicants proposing to add new hospital beds under this subsection shall be prohibited from relocating the new hospital beds for a period of 10 years after beginning operation of the facility.

(g) an applicant proposing to add a new hospital pursuant to this subsection shall locate the new hospital as follows:

(i) in a metropolitan statistical area county, an applicant proposing to add a new hospital pursuant to this subsection shall locate the new hospital within the limited access area and serve a population of 50,000 or more inside the limited access area and within 30 minutes drive time from the proposed new hospital.

(ii) in a rural or micropolitan statistical area county, an applicant proposing to add a new hospital pursuant to this subsection shall locate the new hospital within the limited access area and serve a population of 50,000 or more inside the limited access area and within 60 minutes drive time from the proposed new hospital.

Section 7. Requirements for approval -- replacement beds in a hospital in a replacement zone

sec. 7. (1) if the application involves the development of a new licensed site, an applicant proposing replacement beds in a hospital in the replacement zone shall demonstrate that the new beds in a hospital shall result in a hospital of at least 200 beds in a metropolitan statistical area county or 50 beds in a rural or micropolitan statistical area county. This subsection may be waived by the department if the department determines, in its sole discretion, that a smaller hospital is necessary or appropriate to assure access to health-care services.

(2) in order to be approved, the applicant shall propose to (i) replace an equal or lesser number of beds currently licensed to the applicant at the licensed site at which the proposed replacement beds are located, and (ii) that the proposed new licensed site is in the replacement zone.

(3) an applicant proposing replacement beds in the replacement zone shall not be required to be in compliance with the needed hospital bed supply set forth in appendix c if the application meets all other applicable con review standards and agrees and assures to comply with all applicable project delivery requirements.

Section 8. Requirements for approval of an applicant proposing to relocate existing licensed hospital beds

sec 8. (1) the proposed project to relocate beds, under this section, shall constitute a change in bed capacity under section 1(4) of these standards.

(2) any existing licensed acute care hospital may relocate all or a portion of its beds to another existing licensed acute care hospital as follows:

(a) the licensed acute care hospitals are located within the same subarea, or

(b) the licensed acute care hospitals are located within the same hsa if the receiving hospital meets the requirements of section 6(4)(b) of these standards.

(3) the hospital from which the beds are being relocated, and the hospital receiving the beds, shall not require any ownership relationship.

(4) the relocated beds shall be licensed to the receiving hospital and will be counted in the inventory for the applicable subarea.

(5) the relocation of beds under this section shall not be subject to a mileage limitation.

Section 9. Project delivery requirements -- terms of approval for all applicants

sec. 9. (1) an applicant shall agree that, if approved, the project shall be delivered in compliance with the following terms of con approval:

(a) compliance with these standards

(b) compliance with applicable operating standards

(i) an applicant approved pursuant to section 6(4) must achieve a minimum occupancy of 75 percent over the last 12-month period in the three years after the new beds are put into operation, and for each subsequent calendar year, or the number of new licensed beds shall be reduced to achieve a minimum of 75 percent average annual occupancy for the revised licensed bed complement.

(ii) the applicant must submit documentation acceptable and reasonable to the department, within 30 days after the completion of the 3-year period, to substantiate the occupancy rate for the last 12-month period after the new beds are put into operation and for each subsequent calendar year, within 30 days after the end of the year.

(c) Compliance with the following quality assurance standards:

(i) The applicant shall provide the Department with a notice stating the date the hospital beds are placed in operation and such notice shall be submitted to the Department consistent with applicable statute and promulgated rules.

(ii) the applicant shall assure compliance with section 20201 of the code, being section 333.20201 of the michigan compiled laws.

the applicant shall participate in a data collection network established and administered by the Department or its designee. The data may include, but is not limited to, annual budget and cost

information and demographic, diagnostic, morbidity, and mortality information, as well as the volume of care provided to patients from all payor sources. The applicant shall provide the required data on a separate basis for each licensed site; in a format established by the Department, and in a mutually agreed upon media. The Department may elect to verify the data through on-site review of appropriate records.

(A) The applicant shall participate and submit data to the Michigan Inpatient Data Base (MIDB). The data shall be submitted to the Department or its designee.

(iv) An applicant shall participate in Medicaid at least 12 consecutive months within the first two years of operation and continue to participate annually thereafter.

(d) The applicant, to assure appropriate utilization by all segments of the Michigan population, shall:

(i) not deny services to any individual based on ability to pay or source of payment.

(ii) maintain information by source of payment to indicate the volume of care from each payor and non-payor source provided annually.

(iii) provide services to any individual based on clinical indications of need for the services.

(2) The agreements and assurances required by this section shall be in the form of a certification authorized by the governing body of the applicant or its authorized agent.

Section 10. Rural, micropolitan statistical area, and metropolitan statistical area Michigan counties

Sec. 10. Rural, micropolitan statistical area, and metropolitan statistical area Michigan counties, for purposes of these standards, are incorporated as part of these standards as Appendix B. The Department may amend Appendix B as appropriate to reflect changes by the statistical policy office of the office of information and regulatory affairs of the United States office of management and budget.

Section 11. Department inventory of beds

Sec. 11. The Department shall maintain and provide on request a listing of the Department inventory of beds for each subarea.

Section 12. Effect on prior planning policies; comparative reviews

Sec. 12. (1) These CON review standards supersede and replace the CON standards for hospital beds approved by the CON Commission on March 8, 2005 and effective May 27, 2005.

(2) Projects reviewed under these standards shall be subject to comparative review except those projects meeting the requirements of Section 7 involving the replacement of beds in a hospital within the replacement zone and projects involving acquisition (including purchase, lease, donation or comparable arrangements) of a hospital.

Section 13. Additional requirements for applications included in comparative reviews

Sec. 13. (1) Except for those applications for limited access areas, any application for hospital beds, that is subject to comparative review under Section 22229 of the Code, being Section 333.22229 of the Michigan Compiled Laws, or under these standards shall be grouped and reviewed comparatively with other applications in accordance with the CON rules.

(2) Each application in a comparative review group shall be individually reviewed to determine whether the application is a qualifying project. If the Department determines that two or more competing applications are qualifying projects, it shall conduct a comparative review. The Department shall approve those qualifying projects which, when taken together, do not exceed the need, as defined in Section 22225(1) of the Code, and which have the highest number of points when the results of subsection (3) are totaled. If two or more qualifying projects are determined to have an identical number of points, then the Department shall approve those qualifying projects that, when taken together, do not exceed the need in the order in which the applications were received by the Department based on the date and time stamp placed on the applications by the department in accordance with rule 325.9123.

(3)(a) A qualifying project will be awarded points based on the percentile ranking of the applicant's uncompensated care volume and as measured by percentage of gross hospital revenues as set forth in the following table. The applicant's uncompensated care volume will be the cumulative of all currently licensed Michigan hospitals under common ownership or control with the applicant that are located in the same health service area as the proposed hospital beds. If a hospital under common ownership or control with the applicant has not filed a Cost Report, then the related applicant shall receive a score of zero. The source document for the calculation shall be the most recent Cost Report filed with the Department for purposes of calculating disproportionate share hospital payments.

Percentile Ranking	Points Awarded
90.0 – 100	25 pts
80.0 – 89.9	20 pts
70.0 – 79.9	15 pts
60.0 – 69.9	10 pts
50.0 – 59.9	5 pts

Where an applicant proposes to close a hospital(s) as part of its application, data from the hospital(s) to be closed shall be excluded from this calculation.

(b) A qualifying project will be awarded points based on the health service area percentile rank of the applicant's Medicaid volume as measured by percentage of gross hospital revenues as set forth in the following table. For purposes of scoring, the applicant's Medicaid volume will be the cumulative of all currently licensed Michigan hospitals under common ownership or control with the applicant that are located in the same health service area as the proposed hospital beds. If a hospital under common ownership or control with the applicant has not filed a Cost Report, then the related applicant shall receive a score of zero. The source document for the calculation shall be the most recent Cost Report filed with the department for purposes of calculating disproportionate share hospital payments.

percentile rank	points awarded
87.5 – 100	20 pts
75.0 – 87.4	15 pts
62.5 – 74.9	10 pts
50.0 – 61.9	5 pts
less than 50.0	0 pts

Where an applicant proposes to close a hospital(s) as part of its application, data from the hospital(s) to be closed shall be excluded from this calculation.

(c) A qualifying project shall be awarded points as set forth in the following table in accordance with its impact on inpatient capacity. If an applicant proposes to close a hospital(s), points shall only be awarded if (i) closure of that hospital(s) does not create a bed need in any subarea as a result of its closing; (ii) the applicant stipulates that the hospital beds to be closed shall not be transferred to another location or facility; and (iii) the utilization (as defined by the average daily census over the previous 24-month period prior to the date that the application is submitted) of the hospital to be closed is at least equal to 50 percent of the size of the proposed hospital (as defined by the number of proposed new licensed beds).

Impact on Capacity	Points Awarded
Closure of hospital(s)	25 pts
Closure of hospital(s) which creates a bed need	-15 pts

(d) A qualifying project will be awarded points based on the percentage of the applicant's historical market share of inpatient discharges of the population in an area which will be defined as that area circumscribed by the proposed hospital locations defined by all of the applicants in the comparative review process under consideration. This area will include any zip code completely within the area as well as any zip code which touches, or is touched by, the lines that define the area included within the figure that is defined by the geometric area resulting from connecting the proposed locations. In the case of two locations or one location or if the exercise in geometric definition does not include at least ten zip codes, the market area will be defined by the zip codes within the county (or counties) that includes the proposed site (or sites). Market share used for the calculation shall be the cumulative market share of the population residing in the set of above-defined zip codes of all currently licensed Michigan hospitals under common ownership or control with the applicant, which are in the same health service area.

Percent	Points Awarded
% of market share	% of market share served x 30 (total pts. awarded)

The source for calculations under this criterion is the MIDB.

Section 14. Review standards for comparative review of a limited access area

Sec. 14. (1) Any application subject to comparative review, under Section 22229 of the Code, being Section 333.22229 of the Michigan Compiled Laws, or under these standards, shall be grouped and reviewed comparatively with other applications in accordance with the CON rules.

(2) Each application in a comparative group shall be individually reviewed to determine whether the application has satisfied all the requirements of Section 22225 of the Code, being Section 333.22225 of the Michigan Compiled Laws and all other applicable requirements for approval in the Code and these standards. If the Department determines that two or more competing applications satisfy all of the requirements for approval, these projects shall be considered qualifying projects. The Department shall approve those qualifying projects which, when taken together, do not exceed the need, as defined in Section 22225(1) of the Code, being Section 333.22225(1) of the Michigan Compiled Laws, and which have the highest number of points when the results of subsection (3) are totaled. If two or more qualifying projects are determined to have an identical number of points, then the

Department shall approve those qualifying projects, when taken together, that do not exceed the need, as defined in Section 22225(1) in
the order in which the applications were received by the Department based on the date and time stamp placed on the application by the Department when the application is filed.

(3)(a) A qualifying project will be awarded points based on the percentile ranking of the applicant's uncompensated care volume as measured by percentage of gross hospital revenues as set forth in the following table. For purposes of scoring, the applicant's uncompensated care will be the cumulative of all currently licensed Michigan hospitals under common ownership or control with the applicant. The source document for the calculation shall be the most recent Cost Report submitted to MDCH for purposes of calculating disproportionate share hospital payments. If a hospital under common ownership or control with the applicant has not filed a Cost Report, then the related applicant shall receive a score of zero.

Percentile Ranking	Points Awarded
90.0 – 100	25 pts
80.0 – 89.9	20 pts
70.0 – 79.9	15 pts
60.0 – 69.9	10 pts
50.0 – 59.9	5 pts

Where an applicant proposes to close a hospital as part of its application, data from the closed hospital shall be excluded from this calculation.

(b) A qualifying project will be awarded points based on the statewide percentile rank of the applicant's Medicaid volume as measured by percentage of gross hospital revenues as set forth in the following table. For purposes of scoring, the applicant's Medicaid volume will be the cumulative of all currently licensed Michigan hospitals under common ownership or control with the applicant. The source documents for the calculation shall be the Cost Report submitted to MDCH for purposes of calculating disproportionate share hospital payments. If a hospital under common ownership or control with the applicant has not filed a Cost Report, then the related applicant shall receive a score of zero.

Percentile Rank	Points Awarded
87.5 – 100	20 pts
75.0 – 87.4	15 pts
62.5 – 74.9	10 pts
50.0 – 61.9	5 pts
Less than 50.0	0 pts

Where an applicant proposes to close a hospital as part of its application, data from the closed hospital shall be excluded from this calculation.

(c) A qualifying project shall be awarded points as set forth in the following table in accordance with its impact on inpatient capacity in the health service area of the proposed hospital site.

Impact on Capacity	Points Awarded
Closure of hospital(s)	15 pts
Move beds	0 pts
Adds beds (net)	-15 pts

or

Closure of hospital(s)
or delicensure of beds
which creates a bed need
or
Closure of a hospital
which creates a new Limited Access Area

(d) A qualifying project will be awarded points based on the percentage of the applicant's market share of inpatient discharges of the population in the limited access area as set forth in the following table. Market share used for the calculation shall be the cumulative market share of Michigan hospitals under common ownership or control with the applicant.

Percent	Points Awarded
% of market share	% of market share served x 15 (total pts awarded)

The source for calculations under this criterion is the MIDB.

(e) A qualifying project will be awarded points based on the percentage of the limited access area's population within a 30 minute travel time of the proposed hospital site if in a metropolitan statistical area county, or within 60 minutes travel time if in a rural or micropolitan statistical area county as set forth in the following table.

Percent	Points Awarded
% of population within 30 (or 60) minute travel time of proposed site	% of population covered x 15 (total pts awarded)

(f) All applicants will be ranked in order according to their total project costs as stated in the CON application divided by its proposed number of beds in accordance with the following table.

Cost Per Bed	Points Awarded
Lowest cost	10 pts
2nd Lowest cost	5 pts
All other applicants	0 pts

Section 15. Documentation of market survey

Sec. 15. An applicant required to conduct a market survey under Section 3 shall specify how the market survey was developed. This specification shall include a description of the data source(s) used, assessments of the accuracy of these data, and the statistical method(s) used. Based on this documentation, the Department shall determine if the market survey is reasonable.

Section 16. Requirements for approval -- acquisition of a hospital

Sec. 16. (1) An applicant proposing to acquire a hospital shall not be required to be in compliance with the needed hospital bed supply set forth in Appendix C for the subarea in which the hospital subject to the proposed acquisition is assigned if the applicant demonstrates that all of the following are met:

(a) the acquisition will not result in a change in bed capacity,
(b) the licensed site does not change as a result of the acquisition,
(c) the project is limited solely to the acquisition of a hospital with a valid license, and
(d) if the application is to acquire a hospital, which was proposed in a prior application to be established as a long-term (acute) care hospital (LTAC) and which received CON approval, the applicant also must meet the requirements of Section 6(2). Those hospitals that received such prior approval are so identified in Appendix A.

Section 17. Requirements for approval – all applicants

Sec. 17. An applicant shall provide verification of Medicaid participation at the time the application is submitted to the Department. An applicant that is a new provider not currently enrolled in Medicaid shall provide a signed affidavit stating that proof of Medicaid participation will be provided to the Department within six (6) months from the offering of services if a CON is approved. If the required documentation is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

Section 18. Health service areas

Sec. 18. Counties assigned to each of the health service areas are as follows:

HSA	COUNTIES					
1 - Southeast	Livingston	Monroe	St. Clair			
Macomb	Oakland	Washtenaw	Wayne			
2 - Mid-Southern	Clinton	Hillsdale	Jackson			
Eaton	Ingham	Lenawee				
3 - Southwest	Barry	Calhoun	St. Joseph			
Berrien	Cass	Van Buren	Branch	Kalamazoo		
4 - West	Allegan	Mason	Newaygo	Ionia	Mecosta	Oceana
Kent	Montcalm	Osceola	Lake	Muskegon	Ottawa	
5 - GLS	Genesee	Lapeer	Shiawassee			
6 - East	Arenac	Huron	Roscommon			
Bay	Iosco	Saginaw	Clare	Isabella	Sanilac	
Gladwin	Midland		Tuscola			
Gratiot	Ogemaw					
7 - Northern Lower	Alcona		Crawford		Missaukee	
	Alpena		Emmet		Montmorency	
	Antrim		Gd Traverse		Oscoda	
	Benzie		Kalkaska		Otsego	
	Charlevoix		Leelanau		Presque Isle	

		Cheboygan	Manistee	Wexford
8 - Upper Peninsula	Alger	Gogebic	Mackinac	
		Baraga	Houghton	Marquette
		Chippewa	Iron	Menominee
		Delta	keweenaw	ontonagon
		dickinson	luce	schoolcraft

Appendix a

Con review standards
For hospital beds

Hospital Subarea Assignments

Health Service Area	Sub Area	Hospital Name	City
1 - Southeast			
	1A	North Oakland Med Centers (Fac #63-0110)	Pontiac
	1A	Pontiac Osteopathic Hospital (Fac #63-0120)	Pontiac
	1A	St. Joseph Mercy – Oakland (Fac #63-0140)	Pontiac
	1A	Select Specialty Hospital - Pontiac (LTAC - FAC #63-0172)*	Pontiac
	1A	Crittenton Hospital (Fac #63-0070)	Rochester
	1A	Huron Valley – Sinai Hospital (Fac #63-0014)	Commerce Township
	1A	Wm Beaumont Hospital (Fac #63-0030)	Royal Oak
	1A	Wm Beaumont Hospital – Troy (Fac #63-0160)	Troy
	1A	Providence Hospital (Fac #63-0130)	Southfield
	1A	Great Lakes Rehabilitation Hospital (Fac #63-0013)	Southfield
	1A	Straith Hospital for Special Surg (Fac #63-0150)	Southfield
	1A	The Orthopaedic Specialty Hospital (Fac #63-0060)	Madison Heights
	1A	St. John Oakland Hospital (Fac #63-0080)	Madison Heights
	1A	Southeast Michigan Surgical Hospital (Fac #50-0100)	Warren
	1B	Bi-County Community Hospital (Fac #50-0020)	Warren
	1B	St. John Macomb Hospital (Fac #50-0070)	Warren
	1C	Oakwood Hosp And Medical Center (Fac #82-0120)	Dearborn
	1C	Garden City Hospital (Fac #82-0070)	Garden City
	1C	Henry Ford –Wyandotte Hospital (Fac #82-0230)	Wyandotte
	1C	Select Specialty Hosp Wyandotte (LTAC - Fac #82-0272)*	Wyandotte
	1C	Oakwood Annapolis Hospital (Fac #82-0010)	Wayne
	1C	Oakwood Heritage Hospital (Fac #82-0250)	Taylor
	1C	Riverside Osteopathic Hospital (Fac #82-0160)	Trenton
	1C	Oakwood Southshore Medical Center (Fac #82-0170)	Trenton

1C	Kindred Hospital – Detroit (Fac #82-0130)	Lincoln Park
1D	Sinai-Grace Hospital (Fac #83-0450)	Detroit
1D	Rehabilitation Institute of Michigan (Fac #83-0410)	Detroit
1D	Harper University Hospital (Fac #/83-0220)	Detroit
1D	St. John Detroit Riverview Hospital (Fac #83-0034)	Detroit
1D	Henry Ford Hospital (Fac #83-0190)	Detroit
1D	St. John Hospital & Medical Center (Fac #83-0420)	Detroit
1D	Children's Hospital of Michigan (Fac #83-0080)	Detroit
1D	Detroit Receiving Hospital & Univ Hlth (Fac #83-0500)	Detroit
1D	St. John Northeast Community Hosp (Fac #83-0230)	Detroit
1D	Kindred Hospital–Metro Detroit (Fac #83-0520)	Detroit
1D	SCCI Hospital-Detroit (LTAC - Fac #83-0521)*	Detroit
1D	Greater Detroit Hosp–Medical Center (Fac #83-0350)	Detroit
1D	Renaissance Hosp & Medical Centers (Fac #83-0390)	Detroit

*This is a hospital that must meet the requirement(s) of Section 16(1)(d) - LTAC.

APPENDIX A (continued)

Health Service Area	Sub Area	Hospital Name	City
1 – Southeast (continued)			
	1D	United Community Hospital (Fac #83-0490)	Detroit
	1D	Harper-Hutzel Hospital (Fac #83-0240)	Detroit
	1D	Select Specialty Hosp–NW Detroit (LTAC - Fac #83-0523)*	Detroit
	1D	Bon Secours Hospital (Fac #82-0030)	Grosse Pointe
	1D	Cottage Hospital (Fac #82-0040)	Grosse Pointe Farm
	1E	Botsford General Hospital (Fac #63-0050)	Farmington Hills
	1E	St. Mary Mercy Hospital (Fac #82-0190)	Livonia
	1F	Mount Clemens General Hospital (Fac #50-0060)	Mt. Clemens
	1F	Select Specialty Hosp – Macomb Co. (FAC #50-0111)*	Mt. Clemens
	1F	St. John North Shores Hospital (Fac #50-0030)	Harrison Twp.
	1F	St. Joseph's Mercy Hosp & Hlth Serv (Fac #50-0110)	Clinton Township
	1F	St. Joseph's Mercy Hospital & Health (Fac #50-0080)	Mt. Clemens
	1G	Mercy Hospital (Fac #74-0010)	Port Huron
	1G	Port Huron Hospital (Fac #74-0020)	Port Huron
	1H	St. Joseph Mercy Hospital (Fac #81-0030)	Ann Arbor
	1H	University Of Michigan Health System (Fac #81-0060)	Ann Arbor
	1H	Select Specialty Hosp–Ann Arbor (Ltac - Fac #81-0081)*	Ann Arbor
	1H	Chelsea Community Hospital (Fac #81-0080)	Chelsea

1H	Saint Joseph Mercy Livingston Hosp (Fac #47-0020)	Howell
1H	Saint Joseph Mercy Saline Hospital (Fac #81-0040)	Saline
1H	Forest Health Medical Center (Fac #81-0010)	Ypsilanti
1H	Brighton Hospital (Fac #47-0010)	Brighton
1I	St. John River District Hospital (Fac #74-0030)	East China
1J	Mercy Memorial Hospital (Fac #58-0030)	Monroe

2 - Mid-Southern

2A	Clinton Memorial Hospital (Fac #19-0010)	St. Johns
2A	Eaton Rapids Medical Center (Fac #23-0010)	Eaton Rapids
2A	Hayes Green Beach Memorial Hosp (Fac #23-0020)	Charlotte
2A	Ingham Reg Med Cntr (Greenlawn) (Fac #33-0020)	Lansing
2A	Ingham Reg Med Cntr (Pennsylvania) (Fac #33-0010)	Lansing
2A	Edward W. Sparrow Hospital (Fac #33-0060)	Lansing
2A	Sparrow – St. Lawrence Campus (Fac #33-0050)	Lansing
2B	Carelink of Jackson (Ltac Fac #38-0030)*	Jackson
2B	W. A. Foote Memorial Hospital (Fac #38-0010)	Jackson
2C	Hillsdale Community Health Center (Fac #30-0010)	Hillsdale

*This is a hospital that must meet the requirement(s) of Section 16(1)(d) - LTAC.

APPENDIX A (continued)

Health Service Area	Sub Area	Hospital Name	City
2 – Mid-Southern (continued)			
	2D	Emma L. Bixby Medical Center (Fac #46-0020)	Adrian
	2D	Herrick Memorial Hospital (Fac #46-0030)	Tecumseh
3 – Southwest			
	3A	Borgess Medical Center (Fac #39-0010)	Kalamazoo
	3A	Bronson Methodist Hospital (Fac #39-0020)	Kalamazoo
	3A	Borgess-Pipp Health Center (Fac #03-0031)	Plainwell
	3A	Lakeview Community Hospital (Fac #80-0030)	Paw Paw
	3A	Bronson – Vicksburg Hospital (Fac #39-0030)	Vicksburg
	3A	Pennock Hospital (Fac #08-0010)	Hastings
	3A	Three Rivers Area Hospital (Fac #75-0020)	Three Rivers
	3A	Sturgis Hospital (Fac #75-0010)	Sturgis
	3A	Sempercare Hospital at Bronson (LTAC - Fac #39-0032)*	Kalamazoo

3B	Fieldstone Ctr of Battle Crk. Health (Fac #13-0030)	Battle Creek
3B	Battle Creek Health System (Fac #13-0031)	Battle Creek
3B	Select Spec Hosp–Battle Creek (Ltac - Fac #13-0111)*	Battle Creek
3B	SW Michigan Rehab. Hosp. (Fac #13-0100)	Battle Creek
3B	Oaklawn Hospital (Fac #13-0080)	Marshall
3C	Community Hospital (Fac #11-0040)	Watervliet
3C	Lakeland Hospital, St. Joseph (Fac #11-0050)	St. Joseph
3C	Lakeland Specialty Hospital (LTAC - Fac #11-0080)*	Berrien Center
3C	South Haven Community Hospital (Fac #80-0020)	South Haven
3D	Lakeland Hospital, Niles (Fac #11-0070)	Niles
3D	Lee Memorial Hospital (A) (Fac #14-0010)	Dowagiac
3E	Community Hlth Ctr Of Branch Co (Fac #12-0010)	Coldwater

4 – WEST

4A	Memorial Medical Center Of West MI (Fac #53-0010)	Ludington
4B	Kelsey Memorial Hospital (Fac #59-0050)	Lakeview
4B	Mecosta County General Hospital (Fac #54-0030)	Big Rapids
4C	Spectrum Hlth-Reed City Campus (Fac #67-0020)	Reed City
4D	Lakeshore Community Hospital (Fac #64-0020)	Shelby
4E	Gerber Memorial Hospital (Fac #62-0010)	Fremont

*This is a hospital that must meet the requirement(s) of Section 16(1)(d) - LTAC.

(A) This is a hospital that has state/federal critical access hospital designation.

APPENDIX A (continued)

Health Service Area	Sub Area	Hospital Name	City
4 – West (continued)			
	4F	Carson City Hospital (Fac #59-0010)	Carson City
	4F	Gratiot Community Hospital (Fac #29-0010)	Alma
	4G	Hackley Hospital (Fac #61-0010)	Muskegon
	4G	Mercy Gen Hlth Partners–(Sherman) (Fac #61-0020)	Muskegon
	4G	Mercy Gen Hlth Partners–(Oak) (Fac #61-0030)	Muskegon

4G	Lifecare Hospitals of Western MI (LTAC - Fac #61-0052)*	Muskegon
4G	Select Spec Hosp–Western MI (LTAC - Fac #61-0051)*	Muskegon
4G	North Ottawa Community Hospital (Fac #70-0010)	Grand Haven
4H	Spectrum Hlth–Blodgett Campus (Fac #41-0010)	E. Grand Rapids
4H	Spectrum Hlth–Butterworth Campus (Fac #41-0040)	Grand Rapids
4H	Spectrum Hlth–Kent Comm Campus (Fac #41-0090)	Grand Rapids
4H	Mary Free Bed Hospital & Rehab Ctr (Fac #41-0070)	Grand Rapids
4H	Metropolitan Hospital (Fac #41-0060)	Grand Rapids
4H	Saint Mary's Mercy Medical Center (Fac #41-0080)	Grand Rapids
4I	Sheridan Community Hospital (A) (Fac #59-0030)	Sheridan
4I	United Memorial Hospital & LTCU (Fac #59-0060)	Greenville
4J	Holland Community Hospital (Fac #70-0020)	Holland
4J	Zeeland Community Hospital (Fac #70-0030)	Zeeland
4K	Ionia County Memorial Hospital (Fac #34-0020)	Ionia
4L	Allegan General Hospital (Fac #03-0010)	Allegan

5 – GLS

5A	Memorial Healthcare (Fac #78-0010)	Owosso
5B	Genesys Reg Med Ctr–Hlth Park (Fac #25-0072)	Grand Blanc
5B	Hurley Medical Center (Fac #25-0040)	Flint
5B	Mclaren Regional Medical Center (Fac #25-0050)	Flint
5B	Select Specialty Hospital-Flint (LTAC - Fac #25-0071)*	Flint
5C	Lapeer Regional Hospital (Fac #44-0010)	Lapeer

6 – East

6A	West Branch Regional Medical Cntr (Fac #65-0010)	West Branch
6A	Tawas St Joseph Hospital (Fac #35-0010)	Tawas City
6B	Central Michigan Community Hosp (Fac #37-0010)	Mt. Pleasant

*This is a hospital that must meet the requirement(s) of Section 16(1)(d) - LTAC.

(A) This is a hospital that has state/federal critical access hospital designation.

APPENDIX A (continued)

Health Service Area	Sub Area	Hospital Name	City
6 – East (continued)			
	6C	Mid-Michigan Medical Center-Clare (Fac #18-0010)	Clare
	6D	Mid-Michigan Medical Cntr - Gladwin (Fac #26-0010)	Gladwin
	6D	Mid-Michigan Medical Cntr - Midland (Fac #56-0020)	Midland
	6E	Bay Regional Medical Center (Fac #09-0050)	Bay City
	6E	Bay Regional Medical Ctr-West (Fac #09-0020)	Bay City
	6E	Samaritan Health Center (Fac #09-0051)	Bay City
	6E	Bay Special Care (LTAC - Fac #09-0010)*	Bay City
	6E	Standish Community Hospital (A) (Fac #06-0020)	Standish
	6F	Select Specialty Hosp–Saginaw (LTAC - Fac #73-0062)*	Saginaw
	6F	Covenant Medical Centers, Inc (Fac #73-0061)	Saginaw
	6F	Covenant Medical Cntr–N Michigan (Fac #73-0030)	Saginaw
	6F	Covenant Medical Cntr–N Harrison (Fac #73-0020)	Saginaw
	6F	Healthsource Saginaw (Fac #73-0060)	Saginaw
	6F	St. Mary's Medical Center (Fac #73-0050)	Saginaw
	6F	Caro Community Hospital (Fac #79-0010)	Caro
	6F	Hills And Dales General Hospital (Fac #79-0030)	Cass City
	6G	Harbor Beach Community Hosp (A) (Fac #32-0040)	Harbor Beach
	6G	Huron Medical Center (Fac #32-0020)	Bad Axe
	6G	Scheurer Hospital (A) (Fac #32-0030)	Pigeon
	6H	Deckerville Community Hospital (A) (Fac #76-0010)	Deckerville
	6H	Mckenzie Memorial Hospital (A) (Fac #76-0030)	Sandusky
	6I	Marlette Community Hospital (Fac #76-0040)	Marlette
7 - Northern Lower			
	7A	Cheboygan Memorial Hospital (Fac #16-0020)	Cheboygan
	7B	Charlevoix Area Hospital (Fac #15-0020)	Charlevoix
	7B	Mackinac Straits Hospital (A) (Fac #49-0030)	St. Ignace
	7B	Northern Michigan Hospital (Fac #24-0030)	Petoskey
	7C	Rogers City Rehabilitation Hospital (Fac #71-0030)	Rogers City
	7D	Otsego Memorial Hospital (Fac #69-0020)	Gaylord

7E	Alpena General Hospital (Fac #04-0010)	Alpena

*This is a hospital that must meet the requirement(s) of Section 15(1)(d) - LTAC.

(A) This is a hospital that has state/federal critical access hospital designation.

APPENDIX A (continued)

Health Service Area	Sub Area	Hospital Name	City
7 - Northern Lower (continued)			
	7F	Kalkaska Memorial Health Center (A) (Fac #40-0020)	Kalkaska
	7F	Leelanau Memorial Health Center (A) (Fac #45-0020)	Northport
	7F	Munson Medical Center (Fac #28-0010)	Traverse City
	7F	Paul Oliver Memorial Hospital (A) (Fac #10-0020)	Frankfort
	7G	Mercy Hospital - Cadillac (Fac #84-0010)	Cadillac
	7H	Mercy Hospital - Grayling (Fac #20-0020)	Grayling
	7I	West Shore Medical Center (Fac #51-0020)	Manistee
8 - Upper Peninsula			
	8A	Grand View Hospital (Fac #27-0020)	Ironwood
	8B	Ontonagon Memorial Hospital (A) (Fac #66-0020)	Ontonagon
	8C	Iron County General Hospital (Fac #36-0020)	Iron River
	8D	Baraga County Memorial Hospital (A) (Fac #07-0020)	L'anse
	8E	Keweenaw Memorial Medical Center (Fac #31-0010)	Laurium
	8E	Portage Health System (Fac #31-0020)	Hancock
	8F	Dickinson County Memorial Hospital (Fac #22-0020)	Iron Mountain
	8G	Bell Memorial Hospital (Fac #52-0010)	Ishpeming
	8G	Marquette General Hospital (Fac #52-0050)	Marquette
	8H	St. Francis Hospital (Fac #21-0010)	Escanaba
	8I	Munising Memorial Hospital (A) (Fac #02-0010)	Munising

8J Schoolcraft Memorial Hospital (A) (Fac #77-0010) Manistique

8K Helen Newberry Joy Hospital (A) (Fac #48-0020) Newberry

8L Chippewa Co. War Memorial Hosp (Fac #17-0020) Sault Ste Marie

(A) This is a hospital that has state/federal critical access hospital designation.

APPENDIX B

CON REVIEW STANDARDS
FOR HOSPITAL BEDS

Rural Michigan counties are as follows:

Alcona Hillsdale Ogemaw
Alger Huron Ontonagon
Antrim Iosco Osceola
Arenac Iron Oscoda
Baraga Lake Otsego
Charlevoix Luce Presque Isle
Cheboygan Mackinac Roscommon
Clare Manistee Sanilac
Crawford Mason Schoolcraft
Emmet Montcalm Tuscola
Gladwin Montmorency
Gogebic Oceana

Micropolitan statistical area Michigan counties are as follows:

Allegan Gratiot Mecosta
Alpena Houghton Menominee
Benzie Isabella Midland
Branch Kalkaska Missaukee
Chippewa Keweenaw St. Joseph
Delta Leelanau Shiawassee
Dickinson Lenawee Wexford
Grand Traverse Marquette

Metropolitan statistical area Michigan counties are as follows:

Barry Ionia Newaygo
Bay Jackson Oakland
Berrien Kalamazoo Ottawa
Calhoun Kent Saginaw
Cass Lapeer St. Clair
Clinton Livingston Van Buren

Eaton Macomb Washtenaw
Genesee Monroe Wayne
Ingham Muskegon

Source:

65 F.R., p. 82238 (December 27, 2000)
Statistical Policy Office
Office of Information and Regulatory Affairs
United States Office of Management and Budget
APPENDIX C
CON REVIEW STANDARDS
FOR HOSPITAL BEDS

The hospital bed need for purposes of these standards, effective September 19, 2006, and until otherwise changed by the Commission are as follows:

Health Service Area	SA No.	Bed Need
1 - SOUTHEAST		
	1A	2732
	1B	465
	1C	1497
	1D	2966
	1E	452
	1F	673
	1G	257
	1H	1571
	1I	50
	1J	150
2 - MID-SOUTHERN		
	2A	841
	2B	375
	2C	50
	2D	90
3 – SOUTHWEST		
	3A	853
	3B	270
	3C	233
	3D	67
	3E	61
4 – WEST		
	4A	59

4B	51
4C	19
4D	13
4E	38
4F	145
4G	376
4H	1340
4I	42
4J	147
4K	18
4L	24

5 - GLS

5A	81
5B	1126
5C	117

APPENDIX C (Continued)

Health Service Area	SA No.	Bed Need
6 - EAST		
	6A	93
	6B	56
	6C	50
	6D	174
	6E	285
	6F	764
	6G	38
	6H	14
	6I	26
7 - NORTHERN LOWER		
	7A	38
	7B	188
	7C	24
	7D	32
	7E	84
	7F	374
	7G	63
	7H	57
	7I	36
8 - UPPER PENINSULA		
	8A	21
	8B	7

8C	19
8D	9
8E	54
8F	71
8G	211
8H	59
8I	6
8J	7
8K	7
8L	52

APPENDIX D

OCCUPANCY RATE TABLE

Adult Medical/Surgical

ADC >=	ADC<	Occup	Beds Start	Stop
	30	0.60		<=50
31	32	0.60	52	52
32	34	0.61	53	56
35	37	0.62	57	60
38	41	0.63	61	65
42	46	0.64	66	72
47	50	0.65	73	77
51	56	0.66	78	85
57	63	0.67	86	94
64	70	0.68	95	103
71	79	0.69	104	114
80	89	0.70	115	126
90	100	0.71	127	140
101	114	0.72	141	157
115	130	0.73	158	177
131	149	0.74	178	200
150	172	0.75	201	227
173	200	0.76	228	261
201	234	0.77	262	301
235	276	0.78	302	350
277	327	0.79	351	410
328	391	0.80	411	484
392	473	0.81	485	578
474	577	0.82	579	696
578	713	0.83	697	850
714	894	0.84	851	894
895		0.85	>=1054	

Pediatric Beds

ADC >	ADC<=	Occup	Beds Start	Stop
	30	0.50		<=50
30	33	0.50	61	66
34	40	0.51	67	79
41	46	0.52	80	88
47	53	0.53	89	100
54	60	0.54	101	111
61	67	0.55	112	121
68	74	0.56	122	131
75	80	0.57	132	139
81	87	0.58	140	149
88	94	0.59	150	158
95	101	0.60	159	167
102	108	0.61	168	175
109	114	0.62	176	182
115	121	0.63	183	190
122	128	0.64	191	198
129	135	0.65	199	206
136	142	0.66	207	213
143	149	0.67	214	220
150	155	0.68	221	226
156	162	0.69	227	232
163	169	0.70	233	239
170	176	0.71	240	245
177	183	0.72	246	252
184	189	0.73	253	256
190	196	0.74	257	262
197		0.75	>=263	

Obstetric Beds

Obstetric Beds cont.

ADC >	ADC<=	Occup	Beds Start	Stop
	30	0.50		<=50
30	33	0.50	61	66
34	40	0.51	67	79
41	46	0.52	80	88
47	53	0.53	89	100
54	60	0.54	101	111
61	67	0.55	112	121
68	74	0.56	122	131
75	80	0.57	132	139
81	87	0.58	140	149
88	94	0.59	150	158
95	101	0.60	159	167
102	108	0.61	168	175
109	114	0.62	176	182
115	121	0.63	183	190
122	128	0.64	191	198
129	135	0.65	199	206
136	142	0.66	207	213
143	149	0.67	214	220
150	155	0.68	221	226
156	162	0.69	227	232
163	169	0.70	233	239
170	176	0.71	240	245
177	183	0.72	246	252
184	189	0.73	253	256
190	196	0.74	257	262
197		0.75	>=263	

APPENDIX E
LIMITED ACCESS AREAS

Limited access areas and the hospital bed need, effective May 27, 2005, for each of those areas are identified below. The hospital bed need for limited access areas shall be changed by the department in accordance with section 2(1)(q) of these standards, and this appendix shall be updated accordingly.

HEALTH SERVICE AREA	LIMITED ACCESS AREA	BED NEED	POPULATION FOR PLANNING YEAR
7	Alpena/Plus 1204	135	59,422
8	Upper Peninsula 1204	179	108,917

Sources:

1) Michigan State University
Department of Geography
Hospital Site Selection Final Report
November 3, 2004, as amended

2) Section 4 of these standards

MICHIGAN DEPARTMENT OF PUBLIC HEALTH
OFFICE OF HEALTH AND MEDICAL AFFAIRS

CON REVIEW STANDARDS FOR HOSPITAL BEDS
-- ADDENDUM FOR PROJECTS FOR HIV INFECTED INDIVIDUALS --

(By authority conferred on the CON Commission by sections 22215 and 22217 of Act No. 368 of the Public Acts of 1978, as amended, and sections 7 and 8 of Act No. 306 of the Public Acts of 1969, as amended, being sections 333.22215, 333.2217, 24.207, and 24.208 of the Michigan Compiled Laws.)

Section 1. Applicability; definitions

Sec. 1. (1) This addendum supplements the CON Review Standards for Hospital Beds and may be used for determining the need for projects established to meet the needs of HIV infected individuals.

(2) Except as provided by sections 2 and 3 below, these standards supplement and do not supercede the requirements and terms of approval required by the CON Review Standards for Hospital Beds.

(3) The definitions that apply to the CON Review Standards for Hospital Beds apply to these standards.

(4) "HIV infected" means that term as defined in Section 5101 of the Code.

(5) Planning area for projects for HIV infected individuals means the State of Michigan.

Section 2. Requirements for approval; change in bed capacity

Sec. 2. (1) A project which, if approved, will increase the number of licensed hospital beds in an overbedded subarea or will result in the total number of existing hospital beds in a subarea exceeding the needed hospital bed supply as determined under the CON Review Standards for Hospital Beds may, nevertheless, be approved pursuant to subsection (3) of this addendum.

(2) Hospital beds approved as a result of this addendum shall be included in the Department inventory of existing beds in the subarea in which the hospital beds will be located. Increases in hospital beds approved under this addendum shall cause subareas currently showing a current surplus of beds to have that surplus increased.

(3) In order to be approved under this addendum, an applicant shall demonstrate all of the following:

(a) The Director of the Department has determined that action is necessary and appropriate to meet the needs of HIV infected individuals for quality, accessible and efficient health care.

(b) The hospital will provide services only to HIV infected individuals.

(c) The applicant has obtained an obligation, enforceable by the Department, from existing licensed hospital(s) in any subarea of this state to voluntarily delicense a number of hospital beds equal to the number proposed in the application. The effective date of the delicensure action will be the date the beds approved pursuant to this addendum are licensed. The beds delicensed shall not be beds already subject to delicensure under a bed reduction plan.

(d) The application does not result in more than 20 beds approved under this addendum in the State.

(4) In making determinations under Section 22225(2)(a) of the Code, for projects under this addendum, the Department shall consider the total cost and quality outcomes for overall community health systems for services in a dedicated portion of an existing facility compared to a separate aids

facility and has determined that there exists a special need, and the justification of any cost increases in terms of important quality/access improvements or the likelihood of future cost reductions, or both.

Section 3. Project delivery requirements--additional terms of approval for projects involving HIV infected individuals approved under this addendum.

Sec. 3. (1) An applicant shall agree that, if approved, the services provided by the beds for HIV infected individuals shall be delivered in compliance with the following terms of CON approval:

(a) The license to operate the hospital will be limited to serving the needs of patients with the clinical spectrum of HIV infection and any other limitations established by the Department to meet the purposes of this addendum.

(b) The hospital shall be subject to the general license requirements of Part 215 of the Code except as waived by the Department to meet the purposes of this addendum.

(c) The applicant agrees that the Department shall revoke the license of the hospital if the hospital provides services to inpatients other than HIV infected individuals.

Section 4. Comparative reviews

Sec. 4. (1) Projects proposed under Section 3 shall be subject to comparative review.

CERTIFICATE OF NEED REVIEW STANDARDS

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

CERTIFICATE OF NEED (CON) REVIEW STANDARDS FOR POSITRON EMISSION TOMOGRAPHY (PET) SCANNER SERVICES

(By authority conferred on the CON Commission by Section 22215 of Act No. 368 of the Public Acts of 1978, as amended, and sections 7 and 8 of Act No. 306 of the Public Acts of 1969, as amended, being sections 333.22215, 24.207 and 24.208 of the Michigan Compiled Laws.)

Section 1. Applicability

Sec. 1. (1) These standards are requirements for the approval and delivery of services for all projects approved and Certificates of Need issued under Part 222 of the Code that involve PET scanner services.

(2) PET is a covered clinical service for purposes of Part 222 of the Code. A PET scanner previously approved pursuant to Section 10 of these standards and recognized by the Department as a dedicated research PET scanner listed in the Department Inventory of PET Scanners, and now seeking approval to operate pursuant to sections 3, 4, or 5, shall be considered as a person requesting CON approval to initiate or expand, as applicable, a PET scanner service.

(3) The Department shall use sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, and 21, as applicable, in applying Section 22225(1) of the Code, being Section 333.22225(1) of the Michigan Compiled Laws.

(4) The Department shall use sections 14 and 15, as applicable, in applying Section 22225(2)(c) of the Code, being Section 333.22225(2)(c) of the Michigan Compiled Laws.

(5) The Department shall use Section 13, as applicable, in applying Section 22215(1)(b) of the Code, being Section 333.22215(1)(b) of the Michigan Compiled Laws.

Section 2. Definitions

Sec. 2. (1) For purposes of these standards:

(a) "Accelerator" means an apparatus, such as a linear accelerator or cyclotron, for accelerating charged particles to high energies by means of electromagnetic fields.

(b) "Acquisition of an existing PET scanner" means obtaining possession or control of an existing PET scanner from an existing PET scanner service by contract, ownership, lease, or other comparable arrangement.

(c) "Acquisition of an existing PET scanner service" means obtaining possession or control of an existing PET service and its unit(s) by contract, ownership, lease, or other comparable arrangement.

(d) "Anatomical site" means the physical area that can be imaged by a single PET scan.

(e) "Arterial sampling" means the insertion of an in-dwelling intra-arterial catheter for the withdrawal of arterial blood as part of a PET procedure.

(f) "Bed position" means the anatomical site being imaged. A change in bed position occurs when a different anatomical site is imaged and the scan requires the physical relocation of the patient relative to the PET scanner.

(g) "Central service coordinator" means the legal entity that has, or will have, operational responsibility for a mobile PET scanner service.

(h) "Code" means Act No. 368 of the Public Acts of 1978, as amended, being Section 333.1101 et seq. of the Michigan Compiled Laws.

(i) "Cyclotron" means an apparatus for accelerating charged particles to high energies by means of electromagnetic fields.

(j) "Dedicated pediatric PET scanner" means a PET scanner approved pursuant to Section 11 of these standards, recognized by the Department as a dedicated pediatric PET scanner listed in the Department Inventory of PET Scanners, and is a PET scanner upon which at least 70% of the PET procedures are performed on patients under 18 years of age.

(k) "Dedicated research PET scanner" means a PET scanner approved pursuant to Section 10 of these standards and recognized by the Department as a dedicated research PET scanner listed in the Department Inventory of PET Scanners. The Department shall modify the Department Inventory of PET Scanners as applicable.

(l) "Department" means the state agency known as the Michigan Department of Community Health (MDCH).

(m) "Department inventory of PET scanners" or "Department Inventory" means the list, maintained by the Department on a continuous basis, of: (i) the PET scanners operating pursuant to a valid CON issued under Part 222 or former Part 221; (ii) PET scanners that are not yet operational but have a valid CON issued under Part 222; (iii) proposed PET scanners under appeal from a final Department decision or pending a hearing from a proposed decision issued under Part 222 of the Code; and (iv) proposed PET scanners that are part of a completed application under Part 222 of the Code.

(n) "Dynamic PET scan" means a PET scan that is closely timed to the administration of a radiopharmaceutical in order to capture the perfusion of the tracer.

(o) "Existing PET scanner" means a CON-approved and operational PET scanner used to provide PET services on the date an application is submitted to the Department.

(p) "Existing PET scanner service" means a CON-approved and operational scanner(s) used to provide PET services at one site in the case of a fixed PET service or at each host site in the case of a mobile PET service on the date an application is submitted to the Department.

(q) "Expand a fixed PET scanner service" means increasing the number of fixed PET scanners at the same geographic location of an existing fixed PET scanner service.

(r) "Expand a mobile PET scanner service" means the addition of a mobile PET scanner that will be operated by a central service coordinator in the same planning area in which the CSC is approved primarily to operate one or more mobile PET scanners as of the date an application is submitted to the Department.

(s) "FDG" means 2-{fluorine-18} fluoro-2-deoxy-D-glucose radiopharmaceuticals.

(t) "Health service area" or "HSA" means the groups of counties listed in Section 22.

(u) "Hospital" means a health facility licensed under Part 215 of the Code.

(v) "Host site" means the geographic address at which a mobile PET scanner is authorized by CON to provide mobile PET scanner services.

(w) "Initiate a mobile PET host site" means the provision of PET services at a host site that has not received any approved mobile PET services within 12 months from the date an application is

submitted to the Department. The term does not include the renewal of a lease for the mobile PET service(s).

(x) "Initiate a PET scanner service" means begin operation of a PET scanner service, either fixed or mobile, at a geographic location that does not offer (or has not offered within the last consecutive 12-month period) approved PET scanner services and is not listed on the Department Inventory of PET Scanners on the date on which an application is submitted to the Department.

(y) "Institutional review board" or "IRB" means an institutional review board as defined by Public Law 93-348 which is regulated by Title 45 CFR 46.

(z) "Medicaid" means title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C.1396 to 1396g and 1396i to 1396u.

(aa) "Metropolitan statistical area county" means a county located in a metropolitan statistical area as that term is defined under the "standards for defining metropolitan and micropolitan statistical areas" by the statistical policy office of the office of information and regulatory affairs of the United States office of management and budget, 65 F.R. p. 82238 (December 27, 2000) and as shown in Appendix A.

(bb) "Michigan Inpatient Data Base" or "MIDB" means the data base compiled by the Michigan Health and Hospital Association or successor organization. The data base consists of inpatient discharge records from all Michigan hospitals and Michigan residents discharged from hospitals in border states for a specific calendar year.

(cc) "Micropolitan statistical area county" means a county located in a micropolitan statistical area as that term is defined under the "standards for defining metropolitan and micropolitan statistical areas" by the statistical policy office of the office of information and regulatory affairs of the United States office of management and budget, 65 F.R. p. 82238 (December 27, 2000) and as shown in Appendix A.

(dd) "Mobile PET scanner" means a PET scanner unit and transporting equipment operated by a central service coordinator that serves two or more host sites.

(ee) "Mobile PET scanner network" means the route (i.e., all host sites) that the central service coordinator is authorized to serve under CON. The mobile PET unit shall operate under a contractual agreement for the provision of PET services on a regularly scheduled basis at each host site, with a minimum of one visit per year.

(ff) "Out-state Michigan" means health service areas two (2) through eight (8).

(gg) "Patient visit" means a single session lasting no more than one day utilizing a PET scanner during which 1 or more PET procedures are performed.

(hh) "Pediatric patient" means any patient less than 18 years of age.

(ii) "PET data unit" means the result of the methodology as used in Section 17.

(jj) "PET equivalent" means the number calculated in accordance with Section 16 for a single patient visit.

(kk) "PET procedure" means the acquisition of a single image or image sequence involving a single injection of tracer.

(ll) "PET scan" means one (1) or more PET procedures performed during a single patient visit.

(mm) "PET scanner" means an FDA-approved full or partial ring scanner or coincidence system that has a crystal at least 5/8-inch thick, techniques to minimize or correct for scatter and/or randoms, and digital detectors and iterative reconstruction. Further, the term does include PET/CT scanner hybrids. If the PET/CT scanner will be used for computed tomography (CT) scans only in conjunction with the PET scan, then no separate CON is required for that CT use. The term does not include single-photon emission computed tomography systems (SPECT), x-ray CT systems, magnetic

resonance, ultrasound computed tomographic systems, gamma cameras modified for either non-coincidence or coincidence imaging, or similar technology.

(nn) "PET scanner services" or "PET services" means either the CON-approved utilization of a PET unit(s) at one site in the case of a fixed PET service or at each host site in the case of a mobile PET service.

(oo) "Planning area" means the health service area(s), as applicable, and identified in Section 23.

(pp) "Radionuclide generator" means the source of radioactive material, other than an accelerator or nuclear reactor, used to produce radiopharmaceuticals.

(qq) "Radiopharmaceutical" means a radioactive pharmaceutical used for diagnostic or therapeutic purposes.

(rr) "Relocate a fixed PET scanner" means a change in the location of a fixed PET scanner(s) from the existing site to a different site within the relocation zone.

(ss) "Relocate an existing fixed PET scanner service" means a change in the location of a fixed pet scanner service and its unit(s) from the existing site to a different site within the relocation zone.

(tt) "Relocation zone" means a proposed site that is within a 10-mile radius of the existing fixed PET scanner service for a metropolitan statistical area county and a 25-mile radius of the existing fixed PET scanner service for a rural or micropolitan statistical area county, based upon documentation acceptable and verified by the Department.

(uu) "Replace a PET scanner" means an equipment change, other than an upgrade, involving a PET scanner that results in that applicant operating the same number of PET scanners before and after project completion.

(vv) " Rural county" means a county not located in a metropolitan statistical area or micropolitan statistical areas as those terms are defined under the "standards for defining metropolitan and micropolitan statistical areas" by the statistical policy office of the office of information regulatory affairs of the United States office of management and budget, 65 F.R. p. 82238 (December 27, 2000) and as shown in Appendix A.

(ww) "SPECT" means single photon emission computed tomography.

(xx) "Static PET scan" means any PET scan that is not dynamic.

(yy) "Tracer" means a radiopharmaceutical developed for use in PET scanner services which allows the quantification and/or qualitative images of chemistry, metabolism, and/or perfusion in vivo.

(zz) "Transmission scan" means transmission computed tomography using a sealed radioactive photon source or x-ray tube photon source applied to the attenuation correction of the emission scan data.

(aaa) "Upgrade an existing PET scanner" means any equipment change that:

(i) does not involve a change in, or replacement of, the scanner;

(ii) does not result in an increase in the number of PET scanners;

(iii) does not result in a change in the type of PET scanner (e.g., changing a mobile PET scanner to a fixed PET scanner) or a change in manufacturer; and

(iv) involves a capital expenditure of less than $500,000 in any consecutive 24-month period.

(2) The definitions in Part 222 shall apply to these standards.

Section 3. Requirements for approval for all fixed services and mobile host sites

Sec. 3. (1) An applicant proposing to provide PET scanner services shall provide the following services and medical specialties:

(a) nuclear medicine services, as documented on the certificate issued by the Department of Environmental Quality,
(b) single photon emission computed tomography (SPECT) services,
(c) computed tomography (CT) scanning services,
(d) magnetic resonance imaging (MRI) services,
(e) cardiac catheterization services
(f) open heart surgery,
(g) thoracic surgery,
(h) cardiology,
(i) oncology,
(j) radiation oncology,
(k) neurology,
(l) neurosurgery, and
(m) psychiatry.

If the applicant does not provide any of the services listed in this subsection at the same site at which the proposed PET scanner service will be located, the applicant shall include in the application written contracts or agreements with a hospital(s) located within the same planning area for the services not provided at the proposed PET scanner service site.

(2) If a proposed PET scanner service does not involve an on-site source of radiopharmaceuticals, an applicant must provide in the application a written contract or agreement that demonstrates that a reliable supply of radiopharmaceuticals will be available to the proposed PET scanner service.

Section 4. Requirements for approval for applicants proposing to initiate a PET scanner service

Sec. 4. (1) An applicant proposing to initiate a fixed PET scanner service shall project an operating level of at least 2,600 PET data units for each proposed PET scanner based on the methodology used in Section 17.

(2) An applicant proposing to initiate a mobile PET scanner service shall project 2,100 PET data units for each proposed mobile PET scanner based on the methodology used in Section 17.
(a) Of the 2,100 PET data units, the applicant(s) shall project a minimum of 360 PET data units, within the same planning area and a 20-mile radius of the proposed host site, for each proposed PET scanner service site located in a planning area that does not include any rural or micropolitan statistical area counties and a minimum of 240 PET data units, within the same planning area as the proposed host site, for each PET scanner service site located in a planning area that includes any rural or micropolitan statistical area counties.
(b) The requirements of subsection (2) shall not apply to an applicant that proposes to add a Michigan site as a host site if the applicant, the central service coordinator, demonstrates that the mobile PET scanner service operates predominantly outside of Michigan and that all of the following requirements are met:
(i) The proposed host site will be located in HSA 8.
(ii) The proposed host site in HSA 8 demonstrates a minimum of 240 PET data units based on the methodology in Section 17.

(3) Initiation of a mobile PET host site does not include the provision of mobile PET services at a host site if the applicant, whether the host site or the central service coordinator, demonstrates or provides, as applicable, each of the following:

(a) The host site has received mobile PET services from an existing approved mobile PET unit within the most recent 12-month period as of the date the application is submitted to the Department.

(b) The addition of a host site to a mobile PET scanner service will not increase the number of PET units operated by the central service coordinator or by any other person.

(c) The application is submitted to the Department prior to the provision of PET services on that network.

(d) A signed certification whereby the host site has agreed and assured that it will provide PET services in accordance with the terms for approval set forth in Section 14 and 15. The applicant also shall provide a current route schedule for the mobile PET scanner service.

(e) The central service coordinator requires, as a condition of any contract with each host site, compliance with the requirements of these standards by that host site, and the central service coordinator assures compliance, by that host site, as a condition of the CON issued to the central service coordinator.

(f) An applicant, whether a central service coordinator or a proposed host site, proposing to initiate a mobile PET host site to an existing mobile PET network or a mobile PET network that has been applied for under Section 5(3), shall not be required to demonstrate a minimum number of PET data units.

(4) An applicant that meets all of the following requirements shall not be required to be in compliance with subsection (1):

(a) The applicant is proposing to initiate a fixed PET scanner service.

(b) The applicant is currently a host site being served by one or more mobile PET scanners.

(c) The applicant has received, in aggregate, the following:

(i) At least 4,500 PET equivalents, for an applicant in a metropolitan statistical area county, during the most recent 12-month period for which the Department has verifiable data.

(ii) At least 4,000 PET equivalents, for an applicant in a rural or micropolitan statistical area county, during the most recent 12-month period for which the Department has verifiable data.

(d) The applicant shall install the fixed PET unit at the same site as the existing approved host site.

(e) The applicant shall cease operation as a host site and not become a host site for at least 12 months from the date the fixed PET scanner, including any temporary scanner used during the transition from mobile to fixed, becomes operational.

Section 5. Requirements for approval for applicants proposing to expand a PET scanner service

Sec. 5. (1) An applicant proposing to increase the number of fixed PET scanners (second, third, etc.) shall demonstrate the following:

(a) For an applicant in a metropolitan statistical area county, all of the applicant's approved fixed PET scanners have performed an average of at least 5,500 PET equivalents per PET scanner during the most recent 12-month period for which the Department has verifiable data.

(b) For an applicant in a rural or micropolitan statistical area county, all of the applicant's approved fixed pet scanners have performed an average of at least 5,000 pet equivalents per pet scanner during the most recent 12-month period for which the department has verifiable data.

(c) In the case of a fixed PET scanner service, the additional PET scanner shall be located at the same geographic location as the existing fixed PET scanner service unless the applicant meets the applicable requirements for relocation in accordance with Section 9.

(2) An applicant proposing to increase the number of mobile PET scanners (second, third, etc.) shall demonstrate the following:

(a) For an applicant serving at least one existing host site in a metropolitan statistical area county, all of the applicant's approved mobile PET scanners on a mobile route have performed an average of at least 5,000 PET equivalents per PET scanner during the most recent 12-month period for which the Department has verifiable data.

(b) For an applicant serving only host sites in rural or micropolitan statistical area counties, all of the applicant's approved mobile PET scanners on a mobile route have performed an average of at least 4,500 PET equivalents per PET scanner during the most recent 12-month period for which the Department has verifiable data.

(3) An applicant that meets all of the following requirements shall not be required to be in compliance with subsection (1):

(a) The applicant is proposing to initiate a mobile PET scanner service.

(b) The applicant is currently a fixed PET scanner service.

(c) The applicant has demonstrated the following:

(i) For an applicant in a metropolitan statistical area county, all of the applicant's approved fixed PET scanners have performed an average of at least 5,500 PET equivalents per PET scanner during the most recent 12-month period for which the Department has verifiable data.

(ii) For an applicant in a rural or micropolitan statistical area county, all of the applicant's approved fixed PET scanners have performed an average of at least 5,000 PET equivalents per PET scanner during the most recent 12-month period for which the Department has verifiable data.

(d) At least two (2) separate CON applications have been submitted simultaneously as host sites for the proposed mobile PET service, subject to Section 4(3).

(e) A proposed regular route schedule, the procedures for handling emergency situations, and copies of all proposed contracts related to the mobile PET service have been included in the CON application.

(f) The requirements of Section 3 have been met.

(g) The applicant agrees to comply with sections (13) and (14).

(h) The mobile unit must operate within the same planning area and comply with Section 4(2)(a).

Section 6. Requirements for approval for applicants proposing to replace a PET scanner

Sec. 6. (1) An applicant proposing to replace an existing fixed PET scanner(s) shall demonstrate that all of the applicant's approved and operating fixed PET scanners have performed an average of at least 4,500 PET equivalents per PET scanner during the most recent 12-month period for which the Department has verifiable data.

(2) An applicant proposing to replace an existing mobile PET scanner(s) shall demonstrate that all of the applicant's approved and operating mobile PET scanners on a mobile route have performed an average of at least 3,000 PET equivalents per PET scanner during the most recent 12-month period for which the Department has verifiable data.

(3) An exemption to subsections (1) and (2) may be made by the Department, if an applicant demonstrates to the satisfaction of the Department, the following:

(a) The existing PET scanner is technologically incapable of performing the applicable minimum number of PET equivalents. An applicant proposing a replacement under this subsection shall provide documentation, satisfactory to the Department, from a person or an organization with recognized professional expertise regarding that type of equipment, other than the applicant or a representative of a manufacturer or vendor of that type of equipment, indicating the number of PET equivalents the existing equipment is technologically capable of performing. The applicant also shall provide documentation, satisfactory to the Department, that the number of PET equivalents performed during the most recent 12-month period, for which the Department has verifiable data, was the number the equipment is technologically capable of performing.

(4) An applicant proposing to replace a PET scanner(s), whether fixed or mobile, shall demonstrate:

(a) the equipment to be replaced is fully depreciated according to generally accepted accounting principles or

(b) either of the following:

(i) the existing equipment clearly poses a threat to the safety of the public and the applicant's staff as determined by the Department or other qualified agency or individual (physicist, US Department of Energy, applicant's radiation safety committee, etc.) or

(ii) the proposed replacement PET scanner(s) offers technological improvements that enhance quality of care, increase efficiency, and reduce operating costs and patient charges.

(5) An applicant that meets all of the following requirements shall not be required to be in compliance with subsections (1), (2), (3) and (4):

(a) The existing PET scanner became operational before January 1, 2005 and is not PET/CT scanner hybrid.

(b) The proposed PET scanner is a PET/CT scanner hybrid.

(6) In the case of a fixed PET scanner, the proposed PET scanner will be located at the same site as the applicant’s existing fixed PET scanner to be replaced. If the proposed scanner will not be located at the same site, the applicant must meet the requirements to relocate a PET scanner at the proposed site, in accordance with Section 9.

Section 7. Requirements for approval for applicants proposing to acquire an existing PET scanner

Sec. 7. An applicant proposing to acquire an existing PET scanner, whether fixed or mobile, shall demonstrate that it meets all of the following:

(a) The project is limited solely to the acquisition of an existing PET scanner.

(b) The project will not change the number of PET scanners listed on the Department Inventory of PET Scanners.

(c) The project will not result in the replacement of the PET scanner to be acquired unless the applicant demonstrates that the requirements of Section 6 also have been met.

(d) The PET scanner to be acquired is listed on the Department Inventory of PET Scanners on the date the application is submitted to the Department.

(e) The applicant agrees to operate the PET scanner in accordance with all applicable project delivery requirements set forth in Section 14 of these standards.

Section 8. Requirements for approval for applicants proposing to acquire an existing PET scanner service

Sec. 8. An applicant proposing to acquire an existing PET scanner service, whether fixed or mobile, shall demonstrate that it meets all of the following:

(a) The project is limited solely to the acquisition of an existing PET scanner service.

(b) The project will not change the number of Pet scanners listed on the Department Inventory of PET Scanners.

(c) The project will not result in the replacement of the PET scanners to be acquired unless the applicant demonstrates that the requirements of Section 6 also have been met.

(d) All PET scanners to be acquired are listed on the Department Inventory of PET Scanners on the date the application is submitted to the Department.

(e) The applicant agrees to operate the PET scanner service in accordance with all applicable project delivery requirements set forth in Section 14.

Section 9. Requirements for approval for applicants proposing to relocate an existing PET scanner service or its unit(s)

Sec. 9. (1) An applicant proposing to relocate an existing fixed PET service and all its existing unit(s) shall demonstrate that it meets all of the following:

(a) The service and all its existing units to be relocated are fixed PET scanners.

(b) The existing fixed PET service to be relocated has been in operation for at least 36 months as of the date of the application submitted to the Department.

(c) The proposed new site of the existing PET service to be relocated is in the relocation zone.

(d) The proposed project will not result in an increase in the number of PET scanner(s) operated by the applicant at the proposed site unless the applicant demonstrates that the requirements of Section 5, as applicable, have also been met.

(e) The proposed project will not result in the replacement of the PET scanner(s) of the service to be relocated unless the applicant demonstrates that the requirements of Section 6, as applicable, have also been met.

(f) The applicant agrees to operate the PET service and all its units in accordance with all applicable project delivery requirements set forth in Section 15 of these standards.

(2) An applicant proposing to relocate a PET scanner of an existing PET service shall demonstrate that it meets all of the following:

(a) The PET scanner to be relocated is a fixed PET scanner.

(b) The existing fixed PET service from which the PET scanner is to be relocated has been in operation for at least 36 months as of the date of the application submitted to the Department.

(c) The proposed new site for the PET scanner to be relocated is in the relocation zone.

(d) The proposed project will not result in the replacement of the PET scanner(s) to be relocated unless the applicant demonstrates that the requirements of Section 6, as applicable, have also been met.

(e) The applicant agrees to operate the PET scanner at the proposed site in accordance with all applicable project delivery requirements set forth in Section 15.

Section 10. Requirements for approval for applicants proposing a dedicated research fixed PET scanner

Sec. 10. (1) An applicant proposing to operate a fixed PET scanner (whether new or replacement) to be used exclusively for research shall demonstrate each of the following:

(a) The PET scanner shall operate under a protocol approved by the applicant's Institutional Review Board.

(b) The applicant agrees to operate the PET scanner in accordance with the terms of approval in Section 14(1)(a), (b), (c)(vi), (d)(iii), (iv) and (v); 14(2); 14(3); and 14(4).

(c) The applicant has access to a cyclotron.

(2) An applicant meeting the requirements of subsection (1) shall be exempt from meeting the requirements and terms of sections 3, 4, 5, 6, 7, 8, 9 and 14(1)(c)(i), (ii), (iii), (iv), (v), (d)(i), and (d)(ii) of these standards.

Section 11. Requirements for approval for applicants proposing to establish a dedicated pediatric PET scanner

Sec. 11. (1) An applicant proposing to establish a dedicated pediatric PET scanner(s) shall demonstrate all of the following:

(a) The applicant shall experience at least 7,000 pediatric (< 18 years old) discharges, excluding normal newborns, in the most recent year of operation.

(b) The applicant shall experience at least 5,000 pediatric (< 18 years old) surgeries in the most recent year of operation.

(c) The applicant shall experience at least 50 new pediatric cancer cases on its cancer registry in the most recent year of operation.

(d) The applicant shall have an active medical staff at the time the application is submitted to the Department that includes, but is not limited to, physicians who are fellowship-trained in the following pediatric specialties:

(i) pediatric radiology (at least two staff members)
(ii) pediatric anesthesiology
(iii) pediatric cardiology
(iv) pediatric critical care
(v) pediatric gastroenterology
(vi) pediatric hematology/oncology
(vii) pediatric neurology
(viii) pediatric neurosurgery
(ix) pediatric orthopedic surgery
(x) pediatric pathology
(xi) pediatric pulmonology
(xii) pediatric surgery
(xiii) neonatology

(e) The applicant shall have in operation the following pediatric specialty programs at the time the application is submitted to the Department:

(i) pediatric bone marrow transplant program
(ii) established pediatric sedation program
(iii) pediatric open heart program

(2) An applicant meeting the requirements of subsection (1) shall be exempt from meeting the requirements of Section 4 or Section 5 of these standards but must meet Section 6.

(3) The dedicated pediatric PET scanner shall be excluded from the adult count for the facility.

SECTION 12. ADDITIONAL REQUIREMENTS FOR MOBILE PET SERVICE

Sec. 12. (1) An applicant proposing to begin operation of a mobile PET service shall demonstrate all of the following:

(a) A separate CON application has been submitted by the central service coordinator and each proposed host site.

(b) A proposed regular route schedule, the procedures for handling emergency situations, and copies of all proposed contracts related to the mobile PET service have been included in the CON application.

(c) The requirements of sections 3, 4, 5, and 6, as applicable, have been met.

(2) An applicant proposing to become a host site on an existing mobile PET scanner service shall demonstrate that it meets all of the following:

(a) Approval of the application will not result in an increase in the number of mobile PET scanners listed on the "Department Inventory of PET Scanners" unless the requirements of Section 5 have been met.

(b) A proposed regular route schedule, the procedures for handling emergency situations, and copies of all proposed contracts related to the mobile PET scanner have been included in the CON application.

Section 13. Requirements for approval for all applicants

Sec. 13. An applicant shall provide verification of Medicaid participation at the time the application is submitted to the Department. If the required documentation is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

Section 14. Project delivery requirements and terms of approval for all applicants

Sec. 14. (1) An applicant shall agree that, if approved, the services provided by the PET service shall be delivered in compliance with the following terms of CON approval:

(a) Compliance with these standards.

(b) Compliance with applicable safety and operating standards.

(c) Compliance with the following quality assurance standards:

(i) The approved PET scanner shall be operating at the applicable required volumes specified in these standards. In meeting this requirement, an applicant shall <u>not</u> include any patient visits conducted by dedicated research PET scanners.

(ii) An applicant shall establish and maintain (A) a standing medical staff and governing body (or its equivalent) requirement that provides for the medical and administrative control of the ordering and utilization of PET patient visits and (B) a formal program of utilization review and quality assurance. These responsibilities may be assigned to an existing body of the applicant, as appropriate.

(iii) A PET service, whether fixed or mobile, shall be staffed so that screening of requests for PET procedures and/or interpretation of PET procedures will be carried out by a physician(s) with appropriate training and familiarity with the appropriate diagnostic use and interpretation of cross-sectional images of the anatomical region(s) to be examined. For purposes of evaluating this subsection,

the Department shall consider it prima facie evidence as to the training of the physician(s) if the physician is board certified or board qualified in nuclear medicine or nuclear radiology. However, an applicant may submit, and the Department may accept, other evidence that the physician(s) is qualified to operate the PET service/scanner. The physician(s) must be on-site or available through telecommunication capabilities to participate in the screening of patients for PET procedures and to provide other consultation services.

(iv) An applicant shall establish a PET service team. A PET service team shall be responsible for (A) developing criteria for procedure performance, (B) developing protocols for procedure performance, (C) developing a clinical data base for utilization review and quality assurance purposes, (D) transmitting requested data to the Department, (E) screening of patients to assure appropriate utilization of the PET scanner, (F) taking and interpreting scans, and (G) coordinating PET activity at a PET host site(s) for a mobile pet service(s)/scanner(s).

(v) At a minimum, the PET service team shall include the following personnel, employed directly by the applicant or on a contractual basis: (A) a team leader, (B) technologists with training in PET scanning, (C) radiation safety personnel, and (D) a physicist(s). The physicist(s) must be board certified or eligible for certification by the American Board of Radiology or an equivalent organization. Other personnel that may be appropriate members of the PET service team, depending on the type of operation and PET procedures performed, include but are not limited to nurses, computer technicians, radio-chemists, radio-chemistry technicians, radio-pharmacists, and instrument maintenance technicians. If the team leader is not a physician, the PET service team also shall include a physician with appropriate training and familiarity with the appropriate diagnostic use and interpretation of cross-sectional images of the anatomical region(s) to be examined.

(vi) The applicant shall have, within the PET service, equipment and supplies to handle clinical emergencies that might occur within the PET service, with PET staff trained in CPR and other appropriate emergency interventions, and a physician on-site or immediately available to the PET service at all times when patients are undergoing PET procedures.

(vii) An applicant shall participate in Medicaid at least 12 consecutive months within the first two years of operation and continue to participate annually thereafter.

(viii) Fixed and mobile PET scanner units shall be operating at a minimum average annual level of utilization during the second twelve months of operation, and annually thereafter, of 1,500 PET equivalents per unit.

(d) Compliance with the following requirements:

(i) The applicant shall accept referrals for PET scanner services from all appropriately licensed practitioners.

(ii) The applicant, to assure that the PET scanner services will be utilized by all segments of the Michigan population, shall (A) not deny PET scanner services to any individual based on ability to pay or source of payment, (B) provide PET scanning services to any individual based on the clinical indications of need for the service, and (C) maintain information by payor and non-paying sources to indicate the volume of care from each source provided annually.

Compliance with selective contracting requirements shall not be construed as a violation of this term.

(iii) The applicant shall participate in a data collection network established and administered by the Department or its designee. The data may include, but are not limited to annual budget and cost information, operating schedules, through-put schedules, demographic and diagnostic information, the volume of care provided to patients from all payor sources, and other data requested by the Department or its designee. The applicant shall provide the required data on a separate basis for each separate and distinct site, PET scanner, or PET service as required by the Department, in a format established by the Department, and in a mutually agreed upon media. The Department may elect to verify the data through

on-site review of appropriate records. If the applicant intends to include research PET equivalents conducted by a PET scanner other than a dedicated research PET scanner in its utilization statistics, the applicant shall submit to the Department a copy of the research protocol with evidence of approval by the Institutional Review Board. The applicant shall submit this at the time the applicant intends to include research procedures in its utilization statistics. The applicant shall separately report to the Department any PET equivalents conducted by a dedicated research PET scanner.

(iv) PET equipment to be replaced shall be removed from service on or before beginning operation of the replacement equipment, including the use of temporary scanners as part of the replacement project.

(v) The applicant shall provide the Department with a notice stating the first date on which the PET scanner became operational, and such notice shall be submitted to the Department consistent with applicable statute and promulgated rules.

(2) An applicant for a dedicated research PET scanner under Section 10 shall agree that the services provided by the PET scanner approved pursuant to Section 10 shall be delivered in compliance with the following terms of CON approval:

(a) The capital and operating costs relating to the dedicated research PET scanner approved pursuant to Section 8 shall be charged only to a specific research account(s) and not to any patient or third-party payor.

(b) The dedicated research PET scanner approved pursuant to Section 10 shall not be used for any purposes other than as approved by the Institutional Review Board unless the applicant has obtained CON approval for the PET scanner pursuant to Part 222 and these standards, other than Section 10.

(3) The operation of and referral of patients to the PET service shall be in conformance with 1978 PA 368, Sec. 16221, as amended by 1986 PA 319; MCL 333.16221; MSA 14.15 (16221).

(4) The agreements and assurances required by this section shall be in the form of a certification authorized by the governing body of the applicant or its authorized agent.

Section 15. Project delivery requirements and additional terms of approval for applicants involving mobile PET services

Sec. 15. (1) In addition to the provisions of Section 14, an applicant for a mobile PET services shall agree that the services provided by the mobile PET scanner(s) shall be delivered in compliance with the following terms of CON approval:

(a) The central service coordinator for a mobile PET service, with an approved CON, shall notify the administrative unit of the Department of Community Health responsible for administering the CON program 30 days prior to dropping an existing host site.

(b) Each host site must have at least one physician who is board certified or board eligible in nuclear medicine or nuclear radiology on its medical staff. The physician(s) shall be responsible for (i) establishing patient examination and infusion protocol and (ii) providing for the interpretation of scans performed by the mobile PET service/scanner.

(c) Each mobile PET scanner service shall have an operations committee with members representing each host site, the central service coordinator, and the medical director. This committee shall oversee the effective and efficient use of the PET scanner, establish the regular route schedule, identify the process by which changes are to be made to the schedule, develop procedures for handling

emergency situations, and review the ongoing operations of the mobile PET scanner service on at least a quarterly basis.

(d) The central service coordinator shall arrange for emergency repair services to be available 24 hours each day for the mobile PET scanner equipment as well as the vehicle transporting the equipment. In addition, to preserve image quality and minimize PET scanner downtime, calibration checks shall be performed on the PET scanner unit at least once each work day or in accordance with the manufacturer's requirements. Routine maintenance services shall be provided on a regularly scheduled basis, at least once a week or in accordance with the manufacturer's requirements, during hours not normally used for patient procedures.

(e) Each host site shall provide a properly prepared parking pad, for the mobile PET scanner unit, of sufficient load-bearing capacity to support the vehicle, a waiting area for patients, and a means for patients to enter the vehicle without going outside (such as an enclosed canopy or an enclosed corridor). Each host site also must provide the capability for processing the film and maintaining the confidentiality of patient records. A communication system must be provided between the mobile vehicle and each host site to provide for immediate notification of emergency medical situations.

(f) A mobile PET scanner service shall operate under a contractual agreement that includes the provision of PET services at each host site on a regularly scheduled basis.

(g) The volume of utilization at each host site shall be reported to the Department by the central service coordinator under the terms of Section 14(1)(d)(iii).

(2) The agreements and assurances required by this section shall be in the form of a certification authorized by the owner or the governing body of the applicant or its authorized agent.

Section 16. Determination of PET equivalents

Sec. 16. For purposes of these standards, PET equivalents shall be calculated as follows:

(a) Each actual patient visit performed during the time period specified in the applicable section(s) of these standards shall be assigned a number of PET equivalents based on the sum of the applicable values set forth in subsections (i) through (vii).

(i) A single patient visit — 1.0

(ii) Number of chemically different tracers used during a single patient visit.
- 1 tracers = 0
- ≥2 tracers = 0.8

(iii) Number of tracer injections performed during a single patient visit.
- 1 tracer injection = 0
- 2 tracer injections = 0.3
- ≥3 tracer injections = 0.6

(iv) Dynamic scan(s) performed during a single patient visit. — 0.5

(v) Number of bed positions used during a single patient visit.
- 1 bed position = 0
- ≥2 bed positions = 0.2 for each additional position

(vi) Arterial sampling performed during a single patient visit. — 0.5

(vii) Transmission scan — .1 per bed position

Total PET Equivalents for a Single Patient Visit

(b) For each pediatric patient visit, the PET equivalent(s) determined pursuant to subdivision (a) shall be multiplied as follows:

patient ≤ 5 years of age multiply by 4.0
patient >5≤10 years of age multiply by 3.0
patient >10≤17 years of age multiply by 2.0

(c) For each radiation therapy patient visit, the PET equivalent(s) determined pursuant to subdivision (a) shall be multiplied by 1.5.

(d) The PET equivalents for each patient visit determined pursuant to subdivisions (a), (b) and (c) shall be summed to determine the total PET equivalents for the time period specified in the applicable section(s) of these standards.

Section 17. Methodology for computing the projected number of PET data units

Sec. 17. The applicant being reviewed under Section 4 shall apply the methodology set forth in this section in computing the projected number of PET data units.

(1)(a) Identify the number of diagnosis specific new cancer cases documented in accord with the requirements of Section 18.

(b) Combine the number of cancer cases for lung (site codes C340-C349), esophagus (site codes C150-C159), colorectal (site codes C180-C209), lymphoma (morphology codes 9590-9729), melanoma (morphology codes 8720-8790), and head & neck [site codes C000-C148, C300-C329, C410, C411, C470 OR C490 excluding C440-C444 (skin of head and neck), and additional codes approved by National Coverage Determination]. Use the name "combined" for this grouping.

(c) Multiply the number resulting from the calculation in "combined" cancer cases identified in subsection (1)(b) by 0.8, which is the estimated probability that a "combined" cancer case will require a PET scan.

(d) Multiply the number resulting from the calculation in subsection (1)(c) by 2.5, which is the estimated number of PET scans needed for each patient requiring a PET scan.

(2)(a) Identify the number of diagnosis specific new cancer cases documented in accord with the requirements of Section 18.

(b) Multiply the number of breast cancer cases (site codes C500-C509) by 0.25, which is the estimated probability that a breast cancer case will require a PET scan.

(c) Multiply the number resulting from the calculation in subsection (2)(b) by 1.0, which is the estimated number of PET scans needed for each patient requiring a PET scan.

(3)(a) Multiply the number of diagnostic cardiac catheterization cases identified in accord with the requirements of Section 20 by 0.1, which is the estimated probability that a patient having a diagnostic cardiac catheterization will require a PET scan.

(b) Multiply the number resulting from the calculation in subsection (3)(a) by 1.0, which is the estimated number of PET scans needed for each patient requiring a PET scan.

(4)(a) Multiply the number of intractable epilepsy cases (ICD-9-CM Codes 345.01, 345.11, 345.41, 345.51, 345.61, 345.71, 345.81, OR 345.91) identified in accord with the requirements of Section 21 by 1.0, which is the estimated probability that a patient having an intractable epilepsy procedure will require a PET scan.

(b) Multiply the number resulting from the calculation in subsection (4)(a) by 1.0, which is the estimated number of PET scans needed for each patient requiring a PET scan.

(5) Sum the numbers resulting from the calculations in subsections (1) through (4) to determine the total number of projected PET data units.

(6) Multiply the result calculated in subsection (5) above by a factor of 3.0 if the applicant is proposing to serve only Planning Area 6 to determine the total number of projected PET data units.

(7) Multiply the result calculated in subsection (5) above by a factor of 2.0 if the applicant is proposing to serve only Planning Area 5 to determine the total number of projected PET data units.

SECTION 18. COMMITMENT OF DIAGNOSIS SPECIFIC NEW CANCER CASES

Sec. 18. (1) An applicant proposing to use diagnosis specific new cancer cases shall demonstrate all of the following:

(a) Only those cancer diagnoses identified in Section 17(1) and 17(2) shall be included.

(b) Each entity contributing diagnosis specific new cancer case data provides, as part of the application at the time it is submitted to the Department, a signed governing body resolution that identifies the number of diagnosis specific cancer cases being committed to the application and that states no current or future diagnosis specific new cancer case data will be used in support of any other application for a PET unit for a period of five (5) years from the date of start of operations of the approved PET service for which data are being committed. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

(c) For fixed PET scanner services, the geographic location of each entity contributing diagnosis specific new cancer case data is in the same planning area as the proposed PET service.

(d) For mobile PET scanner services, the geographic location of each entity contributing diagnosis specific new cancer case data in the planning area(s) for which the proposed PET service contains a proposed host site or within a 75-mile radius of the proposed host site for rural and micropolitan statistical area counties or 25-mile radius for metropolitan statistical area counties.

(e) No entity contributing diagnosis specific new cancer case data has previously committed or is committing data to another service that is less than five (5) years from the start of operations of that service and is listed on the “Department Inventory of Pet Scanners.”

(2) No entity currently operating or approved to operate a scanner, whether fixed or mobile, listed on the "Department Inventory of PET Scanners" shall contribute diagnosis specific new cancer cases.

(3)(a) The Department may not consider a withdrawal of diagnosis specific new cancer case data during the 120-day application review cycle following the date on which the Department review of the application commences or after a proposed decision to approve the application has been issued unless the application is denied, withdrawn, or expired.

(b) The withdrawal must be submitted to the Department in the form of a governing body resolution that contains the specific CON application number to which the data were originally committed, the legal applicant entity, the committing entity, the type of data, the date of the meeting in

which the governing body authorized the withdrawal of the data, the governing body president's signature, and the date of the signature.

SECTION 19. DOCUMENTATION OF DIAGNOSIS SPECIFIC NEW CANCER CASE DATA

Sec. 19. (1) An applicant required to document volumes of diagnosis specific new cancer cases shall submit, as part of its application at the time it is submitted to the Department, documentation from the Division for Vital Records and Health Statistics verifying the number of diagnosis specific new cancer cases provided in support of the application for the most recent calendar year for which verifiable data are available from the State Registrar. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

(2) Diagnosis specific new cancer case data supporting an application under these standards shall be submitted to the Division for Vital Records and Health Statistics using a format and media specified in instructions from the Department of Community Health.

Section 20. Commitment and documentation of diagnostic cardiac catheterization data

Sec. 20. (1) An applicant proposing to use diagnostic cardiac catheterization data shall demonstrate all of the following:

(a) Each entity contributing diagnostic cardiac catheterization data [pursuant to Section 17(3)(a)] provides, as part of the application at the time it is submitted to the Department, a signed governing body resolution that identifies the number of diagnostic cardiac catheterization cases (sessions) committed to the application and that states no current or future diagnostic cardiac catheterization data will be used in support of any other application for a PET unit for the duration of the PET service for which data are being committed for a period of five (5) years from the date of start of operations of the approved PET service for which data are being committed. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

(b) For fixed PET scanner services, the geographic location of each entity contributing diagnostic cardiac catheterization data is in the same planning area as the proposed PET unit/service.

(c) For mobile PET scanner services, the geographic location of each entity contributing diagnosis specific new cancer case data in the planning area(s) for which the proposed PET service contains a proposed host site or within a 75-mile radius of the proposed host site for rural and micropolitan statistical area counties or 25-mile radius for metropolitan statistical area counties.

(d) No entity contributing diagnostic cardiac catheterization data has previously committed or is committing data to another service that is less than five (5) years from the start of operations of that service and is listed on the "Department Inventory of Pet Scanners."

(e) The diagnostic cardiac catheterization case data is from the most recently completed report(s) of the "Annual Hospital Statistical Questionnaire" produced by the Department, and the contributing entity has CON Approval to provide diagnostic cardiac catheterization services.

(2) No entity currently operating or approved to operate a PET scanner, whether fixed or mobile, listed on the "Department Inventory of PET Scanners" shall contribute diagnostic cardiac catheterization case data.

(3)(a) The Department may not consider a withdrawal of diagnostic cardiac catheterization case data during the 120-day application review cycle following the date on which the Department review of the application commences or after a proposed decision to approve the application has been denied unless the application is denied, withdrawn, or expired.

(b) The withdrawal must be submitted to the Department in the form of a governing body resolution that contains the specific CON application number to which the data were originally committed, the legal applicant entity, the committing entity, the type of data, the date of the meeting in which the governing body authorized the withdrawal of the data, the governing body president's signature, and the date of the signature.

Section 21. Commitment and documentation of intractable epilepsy data

Sec. 21. (1) An applicant proposing to use intractable epilepsy cases shall demonstrate all of the following:

(a) Each entity contributing intractable epilepsy data [pursuant to Section 17(4)(a)] provides, as part of the application at the time it is submitted to the Department, a signed governing body resolution that identifies the number of intractable epilepsy cases committed to the application and that states no current or future intractable epilepsy case data will be used in support of any other application for a PET unit for the duration of the PET service for which the data are being committed for a period of five (5) years from the date of start of operations of the approved PET service for which data are being committed. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

(b) For fixed PET scanner services, the geographic location of each entity contributing intractable epilepsy case data is in the same planning area as the proposed PET unit/service.

(c) For mobile PET scanner services, the geographic location of each entity contributing diagnosis specific new cancer case data in the planning area(s) for which the proposed PET service contains a proposed host site or within a 75-mile radius of the proposed host site for rural and micropolitan statistical area counties or 25-mile radius for metropolitan statistical area counties.

(d) No entity contributing intractable epilepsy case data has previously committed or is committing data to another service that is less than five (5) years from the start of operations of that service and is listed on the "Department Inventory of Pet Scanners."

(e) The intractable epilepsy case data is from the most recent Michigan Inpatient Data Base (MIDB) available to the Department.

(2) No entity currently operating or approved to operate a scanner, whether fixed or mobile, listed on the "Department Inventory of Pet Scanners" shall contribute intractable epilepsy case data.

(3)(a) The Department may not consider a withdrawal of intractable epilepsy case data during the 120-day application review cycle following the date on which the Department review of the application commences or after a proposed decision to approve the application unless the application is denied, withdrawn, or expired.

(b) The withdrawal must be submitted to the Department in the form of a governing body resolution that contains the specific CON application number to which the data were originally committed, the legal applicant entity, the committing entity, the type of data, the date of the meeting in which the governing body authorized the withdrawal of the data, the governing body president's signature, and the date of the signature.

Section 22. Health Service Areas

Sec. 22. Counties assigned to each health service area are as follows:

HEALTH SERVICE AREA	COUNTIES		
1	Livingston	Monroe	St. Clair
	Macomb	Oakland	Washtenaw
	Wayne		
2	Clinton	Hillsdale	Jackson
	Eaton	Ingham	Lenawee
3	Barry	Calhoun	St. Joseph
	Berrien	Cass	Van Buren
	Branch	Kalamazoo	
4	Allegan	Mason	Newaygo
	Ionia	Mecosta	Oceana
	Kent	Montcalm	Osceola
	Lake	Muskegon	Ottawa
5	Genesee	Lapeer	Shiawassee
6	Arenac	Huron	Roscommon
	Bay	Iosco	Saginaw
	Clare	Isabella	Sanilac
	Gladwin	Midland	Tuscola
	Gratiot	Ogemaw	
7	Alcona	Crawford	Missaukee
	Alpena	Emmet	Montmorency
	Antrim	Gd Traverse	Oscoda
	Benzie	Kalkaska	Otsego
	Charlevoix	Leelanau	Presque Isle
	Cheboygan	Manistee	Wexford
8	Alger	Gogebic	Mackinac
	Baraga	Houghton	Marquette
	Chippewa	Iron	Menominee
	Delta	Keweenaw	Ontonagon
	Dickinson	Luce	Schoolcraft

SECTION 23. PLANNING AREAS

Sec. 23. Health service areas assigned to each planning area are as follows:

PLANNING AREA 1 COUNTIES

HSA 1	Livingston	Monroe	St. Clair
	Macomb	Oakland	Washtenaw
	Wayne		

PLANNING AREA 2

HSA 2	Clinton	Hillsdale	Jackson
	Eaton	Ingham	Lenawee
HSA 3	Barry	Calhoun	St. Joseph
	Berrien	Cass	Van Buren
	Branch	Kalamazoo	

PLANNING AREA 3

HSA 4	Allegan	Mason	Newaygo
	Ionia	Mecosta	Oceana
	Kent	Montcalm	Osceola
	Lake	Muskegon	Ottawa

PLANNING AREA 4

HSA 5	Genesee	Lapeer	Shiawassee
HSA 6	Arenac	Huron	Roscommon
	Bay	Iosco	Saginaw
	Clare	Isabella	Sanilac
	Gladwin	Midland	Tuscola
	Gratiot	Ogemaw	

PLANNING AREA 5

HSA 7	Alcona	Crawford	Missaukee
	Alpena	Emmet	Montmorency
	Antrim	Gd Traverse	Oscoda
	Benzie	Kalkaska	Otsego
	Charlevoix	Leelanau	Presque Isle
	Cheboygan	Manistee	Wexford

PLANNING AREA 6

HSA 8	Alger	Gogebic	Mackinac
	Baraga	Houghton	Marquette
	Chippewa	Iron	Menominee
	Delta	Keweenaw	Ontonagon
	Dickinson	Luce	Schoolcraft

Section 24. Department Inventory of PET Scanners

Sec. 24. The Department shall maintain and provide upon request a listing of the Department Inventory of Pet Scanners as of the effective date of these standards.

Section 25. Comparative reviews; effect on prior planning policies

Sec. 25. (1) Proposed projects reviewed under these standards shall not be subject to comparative review except for applicants under Section 4(4) that may be subject to comparative review.

(2)(a) These CON review standards supersede and replace the CON Standards for Positron Emission Tomography approved by the CON Commission on March 9, 2004 and effective June 4, 2004.

APPENDIX A

CON REVIEW STANDARDS
FOR PET SCANNER SERVICES

Rural Michigan counties are as follows:

Alcona	Hillsdale	Ogemaw
Alger	Huron	Ontonagon
Antrim	Iosco	Osceola
Arenac	Iron	Oscoda
Baraga	Lake	Otsego
Charlevoix	Luce	Presque Isle
Cheboygan	Mackinac	Roscommon
Clare	Manistee	Sanilac
Crawford	Mason	Schoolcraft
Emmet	Montcalm	Tuscola
Gladwin	Montmorency	
Gogebic	Oceana	

Micropolitan statistical area Michigan counties are as follows:

Allegan	Gratiot	Mecosta
Alpena	Houghton	Menominee
Benzie	Isabella	Midland
Branch	Kalkaska	Missaukee
Chippewa	Keweenaw	St. Joseph
Delta	Leelanau	Shiawassee
Dickinson	Lenawee	Wexford
Grand Traverse		Marquette

Metropolitan statistical area Michigan counties are as follows:

Barry	Ionia	Newaygo
Bay	Jackson	Oakland

Berrien Kalamazoo Ottawa
Calhoun Kent Saginaw
Cass Lapeer St. Clair
Clinton Livingston Van Buren
Eaton Macomb Washtenaw
Genesee Monroe Wayne
Ingham Muskegon

Source:

65 F.R., p. 82238 (December 27, 2000)
Statistical Policy Office
Office of Information and Regulatory Affairs
United States Office of Management and Budget

CERTIFICATE OF NEED REVIEW STANDARDS

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

CERTIFICATE OF NEED (CON) REVIEW STANDARDS FOR BONE MARROW TRANSPLANTATION SERVICES

(By authority conferred on the CON Commission by Section 22215 of Act No. 368 of the Public Acts of 1978, as amended, and sections 7 and 8 of Act No. 306 of the Public Acts of 1969, as amended, being sections 333.22215, 24.207, and 24.208 of the Michigan Compiled Laws.)

Section 1. Applicability

Sec. 1. (1) These standards are requirements for the approval and delivery of services for all projects approved and Certificates of Need issued under Part 222 of the Code which involve bone marrow transplantation services.

(2) A bone marrow transplantation service is a covered clinical service for purposes of Part 222 of the Code.

(3) A bone marrow transplantation service listed on the Department inventory that is located at a hospital site and initially does not perform both allogeneic and autologous procedures shall not be required to obtain separate CON approval to begin performing both autologous and allogeneic bone marrow transplant procedures.

(4) An existing bone marrow transplantation service that performs only adult procedures shall require separate CON approval in order to perform pediatric procedures. An existing bone marrow transplantation service that performs only pediatric procedures shall require separate CON approval in order to perform adult procedures.

(5) The Department shall use Sections 3, 7 & 8, as applicable, in applying Section 22225(1) of the Code, being Section 333.22225(1) of the Michigan Compiled Laws.

(6) The Department shall use Sections 4, 5 & 6, as applicable, in applying Section 22225(2)(c) of the Code, being Section 333.22225(2)(c) of the Michigan Compiled Laws.

Section 2. Definitions

Sec. 2. (1) As used in these standards:

(a) "Acquisition of a bone marrow transplantation service" means the acquisition (including purchase, lease, donation, or other arrangement) of an existing bone marrow transplantation service.

(b) "Adult," for purposes of these standards, means an individual age 18 or older.

(c) "Allogeneic" means transplantation between genetically nonidentical individuals of the same species.

(d) "Autologous" means transplantation in which the donor and recipient are the same individual.

(e) "Bone marrow transplantation service" means the transplantation of proliferating hematopoietic stem cells essential to the survival of a patient derived from the bone marrow, the peripheral circulation, cord blood, or any other source.

(f) "Cancer hospital" means a hospital that has been approved to participate in the Title XVIII (Medicare) program as a prospective payment system (PPS) exempt hospital in accordance with Section 1886 (d)(1)(B)(v) of the Social Security Act, as amended.

(g) "Certificate of Need Commission" or "CON Commission" means the Commission created pursuant to Section 22211 of the Code, being Section 333.22211 of the Michigan Compiled Laws.

(h) "Comparative group" means the applications that have been grouped for the same type of project in the same planning area and are being reviewed comparatively in accordance with the CON rules.

(i) "Code" means Act No. 368 of the Public Acts of 1978, as amended, being Section 333.1101 et seq. of the Michigan Compiled Laws.

(j) "Department" means the Michigan Department of Community Health (MDCH).

(k) "Department inventory of bone marrow transplantation services" means the list maintained by the Department of: (i) the bone marrow transplantation services operating pursuant to a valid CON issued under Part 222 or former Part 221; (ii) operating bone marrow transplantation services for which the operation of that service did not require a CON; and (iii) bone marrow transplantation services that are not yet operational but have a valid CON issued under Part 222. The list shall inventory adult and pediatric services separately and shall specify the site at which the bone marrow transplantation service is authorized.

(l) "Existing bone marrow transplantation service," for purposes of Section 3(5) of these standards, means any of the following: (i) a bone marrow transplantation service listed on the Department inventory, (ii) a proposed bone marrow transplantation service under appeal from a final decision of the Department, or (iii) a proposed bone marrow transplantation service that is part of a completed application under Part 222 (other than the application under review) for which a proposed decision has been issued and which is pending final decision.

(m) "Health service area" or "HSA" means the geographic area set forth in Section 9.

(n) "Implementation plan" means a plan that documents how a proposed bone marrow transplantation service will be initiated within the time period specified in these standards or the CON rules. At a minimum, the implementation plan shall identify:

(i) each component or activity necessary to begin performing the proposed bone marrow transplantation service including, but not limited to, the development of physical plant requirements, such as an intensive care unit capable of treating immuno-suppressed patients, equipment acquisitions, and recruitment and employment of all physician and support staff;

(ii) the time table for completing each component or activity specified in subsection (i); and

(iii) if the applicant previously has been approved for a bone marrow transplantation service for which either the CON expired or the service did not perform a transplant procedure during any consecutive 12-month period, what changes have or will be made to ensure that the proposed service can be initiated and provided on a regular basis.

(o) "Initiate" or "implement" for purposes of these standards, means the performance of the first transplant procedure. The term of an approved CON shall be 18 months or the extended period established by Rule 325.9403(2), if authorized by the Department.

(p) "Initiate a bone marrow transplantation service" means to begin operation of a bone marrow transplantation service at a site that does not provide either adult or pediatric bone marrow transplantation services and is not listed on the Department inventory as of the date an application is submitted to the Department. The term includes an adult service that is proposing to provide a pediatric

bone marrow transplantation service, and a pediatric service that is proposing to provide an adult bone marrow transplantation service. The term does not include beginning operation of a bone transplantation service by a cancer hospital which acquires an existing bone marrow transplantation service provided that all of the staff, services, and programs required under section 3(3) are to be provided by the cancer hospital and/or by the hospital from which the bone marrow transplantation service is being acquired.

(q) "Institutional Review Board" or "IRB" means an institutional review board as defined by Public Law 93-348 which is regulated by Title 45 CFR 46.

(r) "Licensed site" means either:

(i) in the case of a single site hospital, the location of the facility authorized by license and listed on that licensee's certificate of licensure or

(ii) in the case of a hospital with multiple sites, the location of each separate and distinct inpatient unit of the health facility as authorized by license and listed on that licensee's certificate of licensure.

(s) "Medicaid" means title XIX of the social security act, chapter 531, 49 Stat. 620, 1396r-6 and1396r-8 to 1396v.

(t) "Pediatric" means, for purposes of these standards, any patient 20 years of age or less or any patient with congenital conditions or diseases for which bone marrow transplantation is a treatment.

(u) "Planning area" means:

(i) for an adult bone marrow transplantation service, the state of Michigan.

(ii) for a pediatric bone marrow transplantation service, either:

(A) planning area one that includes the counties in health service areas 1, 2, 5, and 6, and the following counties in health service area 7: Alcona, Alpena, Cheboygan, Crawford, Montmorency, Oscoda, Otsego, and Presque Isle; or

(B) planning area two that includes the counties in health service areas 3, 4, and 8, and the following counties in health service area 7: Antrim, Benzie, Charlevoix, Emmet, Grand Traverse, Kalkaska, Leelanau, Manistee, Missaukee, and Wexford.

(v) "Qualifying project" means each application in a comparative group that has been reviewed individually and has been determined by the Department to have satisfied all of the requirements of Section 22225 of the Code, being Section 333.22225 of the Michigan Compiled Laws, and all other applicable requirements for approval in the Code and these standards.

(w) "Survival rate" means, for purposes of these standards, the rate calculated using the Kaplan-Meier technique and the following: (i) the date of transplantation (or, if more than one transplant is performed, the date of the first transplant) must be the starting date for calculation of the survival rate; (ii) for those dead, the date of death is used, if known. If the date of death is unknown, it must be assumed as 1 day after the date of the last ascertained survival; (iii) for those who have been ascertained as surviving within 60 days before the fiducial date (the point in time when the facility's survival rates are calculated and its experience is reported), survival is considered to be the date of the last ascertained survival, except for patients described in subsection (v); (iv) any patient who is not known to be dead, but whose survival cannot be ascertained to a date that is within 60 days before the fiducial date, must be considered as "lost to follow up" for the purposes of the survival rate calculation; (v) any patient transplanted between 61 and 120 days before the fiducial date must be considered as "lost to follow up" if he or she is not known to be dead and his or her survival has not been ascertained for at least 60 days before the fiducial date. Any patient transplanted within 60 days before the fiducial date must be considered as "lost to follow up" if he or she is not known to be dead and his or her survival has not been ascertained on the fiducial date; and (vi) the survival analyses must use the assumption that each patient in the "lost to follow up" category died 1 day after the last date of

ascertained survival. However, an applicant may submit additional analyses that reflect each patient in the "lost to follow up" category as alive at the date of the last ascertained survival.

(2) The definitions of Part 222 shall apply to these standards.

Section 3. Requirements for approval for applicants proposing to initiate a bone marrow transplantation service

Sec. 3. (1) An applicant proposing to initiate a bone marrow transplantation service shall specify in the application whether the proposed service will perform either or both adult and pediatric bone marrow transplant procedures.

(2) An applicant shall specify the licensed hospital site at which the bone marrow transplantation service will be provided.

(3) An applicant proposing to initiate either an adult or pediatric bone marrow transplantation service shall demonstrate that the licensed hospital site at which the transplants will be offered provides each of the following staff, services, and programs:

(a) operating rooms.

(b) continuous availability, on-site or physically connected, either immediate or on-call, of CT scanning, magnetic resonance imaging, ultrasound, angiography, and nuclear medicine services.

(c) dialysis.

(d) inpatient-outpatient social work.

(e) inpatient-outpatient psychiatry/psychology.

(f) clinical research.

(g) a microbiology and virology laboratory.

(h) a histocompatibility laboratory that meets the standards of the American Society for Histocompatibility and Immunogenetics, or an equivalent organization, either on-site or through written agreement.

(i) a hematopathology lab capable of performing cell phenotype analysis using flow cytometry.

(j) a clinical chemistry lab with the capability to monitor antibiotic and antineoplastic drug levels, available either on-site or through other arrangements that assure adequate availability.

(k) other support services, as necessary, such as physical therapy and rehabilitation medicine.

(l) continuous availability of anatomic and clinical pathology and laboratory services, including clinical chemistry, and immuno-suppressive drug monitoring.

(m) continuous availability of red cells, platelets, and other blood components.

(n) an active medical staff that includes, but is not limited to, the following board-certified or board-eligible specialists. For an applicant that is proposing to perform pediatric transplant procedures, these specialists shall be board-certified or board-eligible in the pediatric discipline of each specialty.

(i) anesthesiology.

(ii) cardiology.

(iii) critical care medicine.

(iv) gastroenterology.

(v) general surgery.

(vi) hematology.

(vii) infectious diseases.

(viii) nephrology.

(ix) neurology.
(x) oncology.
(xi) pathology, including blood banking experience.
(xii) pulmonary medicine.
(xiii) radiation oncology.
(xiv) radiology.
(xv) urology.

(o) One or more consulting physicians who are board-certified or board-eligible in each of the following specialties. For an applicant proposing to perform pediatric bone marrow transplant procedures, these specialists shall have specific experience in the care of pediatric patients.
(i) dermatology.
(ii) immunology.
(iii) neurosurgery.
(iv) orthopedic surgery.

(4) An applicant must provide an implementation plan for the proposed bone marrow transplantation service.

(5)(a) An applicant shall demonstrate that the number of existing adult bone marrow transplantation services in the planning area identified in Section 2(1)(u)(i) does not exceed three (3) adult bone marrow transplantation services and that approval of the proposed application will not result in the total number of adult bone marrow transplantation services exceeding three (3) in the planning area.

(b) An applicant shall demonstrate that the number of existing pediatric bone marrow transplantation services does not exceed two (2) pediatric bone marrow transplantation services in planning area one identified in Section 2(1)(u)(ii)(A) or one (1) pediatric bone marrow transplantation service in planning area two identified in Section 2(1)(u)(ii)(B) and that approval of the proposed application will not result in the total number of pediatric bone marrow transplantation services exceeding the need for each specific pediatric planning area.

(6)(a) An applicant proposing to initiate an adult bone marrow transplantation service that will perform only allogeneic transplants, or both allogeneic and autologous transplants, shall project that at least 10 allogeneic transplant procedures will be performed in the third 12-months of operation. An applicant proposing to initiate an adult bone marrow transplantation service that will perform only autologous procedures shall project that at least 10 autologous transplant procedures will be performed in the third 12-months of operation.

(b) An applicant proposing to initiate a pediatric bone marrow transplantation service that will perform only allogeneic transplants, or both allogeneic and autologous transplants, shall project that at least 10 allogeneic transplant procedures will be performed in the third 12-months of operation. An applicant proposing to initiate a pediatric bone marrow transplantation service that will perform only autologous procedures shall project that at least 10 autologous transplant procedures will be performed in the third 12-months of operation.

(c) An applicant proposing to initiate both an adult and a pediatric bone marrow transplantation service shall specify whether patients age 18-20 are included in the projection of adult procedures required pursuant to subsection (a) or the projection of pediatric procedures required pursuant to subsection (b). An applicant shall not include patients age 18-20 in both adult and pediatric projections required pursuant to subsections (a) and (b).

(7) An applicant shall provide megavoltage radiation therapy services, either on-site or physically connected, with a nominal beam energy of at least 6 MEV, including the capability to perform total body irradiation.

(8) An applicant shall demonstrate that the licensed hospital site at which the proposed bone marrow transplantation service is proposed has an institutional review board.

(9) An applicant proposing to initiate a pediatric bone marrow transplantation service shall demonstrate that the licensed hospital site at which the pediatric transplant procedures will be performed has each of the following:

(a) a designated pediatric inpatient oncology unit.

(b) a pediatric inpatient intensive care unit.

(c) membership status in either the Pediatric Oncology Group (POG) or the Children's Cancer Group (CCG).

(d) a pediatric tumor board that meets on a regularly scheduled basis.

(e) family support group services, provided either directly or through written agreements.

(f) a pediatric cancer program with the following staff:

(i) a director who is either a board-certified immunologist who has specific training and experience in bone marrow transplantation or a board-certified pediatric hematologist/oncologist.

(ii) nurses with training and experience in pediatric oncology.

(iii) social workers with training and experience in pediatric oncology.

(iv) pediatric psychologists.

(v) child life specialists.

(10)(a) An applicant proposing to initiate either a new adult or pediatric bone marrow transplantation service shall submit, in its application, a written consulting agreement with an existing bone marrow transplantation service, that meets each of the requirements in subsection (b).

(b) The written consulting agreement required by subsection (a) shall specify the term of the agreement and the roles and responsibilities of both the existing and proposed service, including at least the following:

(i) The term of the written consulting agreement is no less than 36 months after the proposed service begins to perform bone marrow transplant procedures.

(ii) One or more representatives of the existing bone marrow transplantation service have been designated as staff responsible for carrying out the roles and responsibilities of the existing service.

(iii) The existing service shall evaluate and make recommendations to the proposed service on policies and procedures, including time tables, for at least each of the following:

(A) nursing services.

(B) infection control.

(C) nutritional support.

(D) staff needs and training.

(E) inpatient and outpatient medical coverage.

(F) transfusion and blood bank policies.

(G) transplant treatment protocols.

(H) hematopoiesis laboratory services and personnel.

(I) data management.

(J) quality assurance program.

(iv) Specify a schedule of site visits by staff of the existing bone marrow transplantation service that, at a minimum, includes:

(A) 6 visits during the first 12-months of operation of the proposed service.

(B) 4 visits during each the second 12-months and third 12-months of operation of the proposed service.

(v) Specify that the purpose of the site visits required by subdivision (iv) is to assess the proposed service and make recommendations related to quality assurance mechanisms of the proposed service, including at least each of the following:

(A) a review of the number of patients transplanted.

(B) transplant outcomes.

(C) all infections requiring treatment or life-threatening toxicity, defined for purposes of this agreement as National Cancer Institutes grade #3 or greater toxicity, excluding hematological toxicity.

(D) all deaths occurring within 100 days from transplant.

(E) each of the requirements of subdivision (iii).

(vi) Specify that a written report and minutes of each site visit shall be completed by the existing bone marrow transplantation service and sent to the proposed service within 2 weeks of each visit, and that copies of the reports and minutes shall be available to the Department upon request. At a minimum, the written report shall address each of the items in subdivision (v).

(vii) Specify that the existing bone marrow transplantation service shall notify the Department and the proposed service immediately if it determines that the proposed service may not be in compliance with any applicable quality assurance requirements, and develop jointly with the proposed service a plan for immediate remedial actions.

(viii) Specify that the existing bone marrow transplantation service shall notify the Department immediately if the consulting agreement required pursuant to these standards is terminated and that the notification shall include a statement describing the reasons for the termination.

(c) For purposes of subsection (10), "existing bone marrow transplantation service" means a service that meets all of the following:

(i) currently is performing and is Foundation for Accreditation of Cell Therapy (FACT) accredited in, the types of transplants (allogeneic or autologous; adult or pediatric) proposed to be performed by the applicant;

(ii) currently is certified as a National Marrow Donor Program; and

(iii) is located in the United States.

(d) An applicant shall document that the existing bone marrow transplantation service meets the requirements of subsection (c).

Section 4. Additional requirements for applications included in comparative reviews

Sec. 4. (1) Any application subject to comparative review under Section 22229 of the Code, being Section 333.22229 of the Michigan Compiled Laws, or these standards, shall be grouped and reviewed with other applications in accordance with the CON rules applicable to comparative reviews.

(2)(a) A qualifying project will have points awarded based on the number of bone marrow transplantation services, adult or pediatric, as applicable, listed on the Department inventory in the health service area in which the proposed service will be located, on the date the application is submitted to the Department, as shown in the following schedule:

Number of BMT Transplant Services (adult or pediatric, as applicable)	Points

	in HSA Awarded
Two or more services	0
One service	2
No services	4

(b) A qualifying project will have up to 4 points awarded based on the percentage of the medical/surgical indigent volume at the licensed hospital site at which the proposed bone marrow transplantation service will be provided in accordance with the following:

(i) For each applicant in the same comparative group, determine the medical/surgical indigent volume, rounded to the nearest whole number, for each licensed hospital site at which a bone marrow transplantation service is proposed to be provided. Determine the licensed hospital site that has the highest indigent volume in the same comparative group. Divide the medical/surgical indigent volume for that licensed hospital site by 4.0. The result is the indigent volume factor.

(ii) For each applicant in the same comparative group, divide the medical/surgical indigent volume by the indigent volume factor determined in subdivision (i). The result, to the first decimal place, is the number of points that will be awarded to each applicant pursuant to this subsection.

For purposes of this subsection, indigent volume means the ratio of a hospital's indigent charges to its total charges expressed as a percentage as determined by the Michigan Department of Community Health Medical Services Administration pursuant to Chapter VIII of the Medical Assistance Program Hospital Manual. The indigent volume data being used for rates in effect at the time the application is deemed submitted will be used by the Department in determining the number of points awarded to each qualifying project.

(c) A qualifying project will have 2 points awarded if an applicant documents that, during the 36-month period prior to the date an application is submitted to the Department, at least 15 patients received pre- and post-transplant care at the licensed hospital site at which the bone marrow transplant procedures will be performed and were referred for and received a bone marrow transplant at an existing bone marrow transplantation service, and submits documentation from the existing bone marrow transplantation service(s) of these referrals.

(3) Each application in a comparative group shall be individually reviewed to determine whether the application has satisfied all the requirements of Section 22225 of the Code being Section 333.22225 of the Michigan Compiled Laws and all other applicable requirements for approval in the Code and these standards. If the Department determines that two or more competing applications satisfy all of the requirements for approval, these projects shall be considered qualifying projects. The Department shall approve those qualifying projects which, when taken together, do not exceed the need, as defined in Section 22225(1) of the Code, and which have the highest number of points when the results of subsection (2) are totaled. If two or more qualifying projects are determined to have an identical number of points, then the Department shall approve those qualifying projects which, when taken together, do not exceed the need, in the order in which the applications were received by the Department, based on the date and time stamp placed on the applications by the Department in accordance with Rule 325.9123.

(4) No points will be awarded to an applicant under specific subsections of Section 4 if information presented is inconsistent with related information provided in other portions of the CON application.

Section 5. Requirements for approval -- all applicants

Sec. 5. An applicant shall provide verification of Medicaid participation at the time the application is submitted to the Department. An applicant that is initiating a new service or is a new provider not currently enrolled in Medicaid shall provide a signed affidavit stating that proof of Medicaid participation will be provided to the Department within six (6) months from the offering of services if a CON is approved. If the required documentation is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

Section 6. Project delivery requirements -- terms of approval for all applicants

Sec. 6. (1) An applicant shall agree that, if approved, the bone marrow transplantation service shall be delivered in compliance with the following terms of CON approval:

(a) Compliance with these standards. An applicant shall immediately report to the Department any changes in key staff or other aspects of the bone marrow transplantation service that may affect its ability to comply with these standards.

(b) Compliance with applicable safety and operating standards.

(c) Compliance with the following quality assurance standards, as applicable, no later than the date the first bone marrow transplant procedure, allogeneic or autologous, is performed:

(i) An applicant shall establish and maintain, either on-site or through written agreements, all of the following:

(A) 24-hour blood bank support, including pheresis capability, irradiated blood, products suitable for cytomegalovirus-negative transplants, and blood component therapy.

(B) a cytogenetics and/or molecular genetic laboratory.

(C) a processing and cryopreservation laboratory that meets the standards of the Foundation for Accreditation of Cell Therapy (FACT) or an equivalent organization.

(D) for a program that performs allogeneic transplants, a histocompatibility laboratory that has the capability of DNA-based HLA-typing and meets the standards of the American Society for Histocompatibility and Immunogenetics or an equivalent organization.

(E) anatomic and clinical pathology with competency in interpreting pathologic findings related to graft-v-host disease (programs performing allogeneic transplants) and other opportunistic infections in immuno-compromised hosts (programs performing allogeneic or autologous transplants).

(F) therapeutic drug monitoring.

(ii) An applicant shall establish and maintain, at the licensed hospital site at which the transplants are performed, both of the following:

(A) a protective environmental bone marrow transplant inpatient unit for immuno-suppressed patients that has an isolation policy, an infection control plan specific to that unit, and an air handling system capable of preventing nosocomial infections disseminated from central heating and cooling systems and ambient air.

(B) a specialized intensive care unit capable of treating immuno-suppressed neutropenic patients.

(iii) An applicant shall establish and maintain written policies related to outpatient care for bone marrow transplantation patients, including at least the following:

(A) the ability to evaluate and provide treatment on a 24-hour basis.

(B) nurses experienced in the care of bone marrow transplantation patients.

(C) a designated outpatient area for patients requiring long-duration infusions or the administration of multiple medications or blood product transfusions.

(iv) A bone marrow transplantation service shall establish and maintain a dedicated transplant team that includes at least the following staff:

(A) a transplant team leader, who is a physician that is board-certified in at least one of the following specialties: hematology, medical oncology, immunology, or pediatric hematology/oncology, as appropriate, and has had either at least one year of specific clinical training or two years of experience, both inpatient and outpatient, as an attending physician principally responsible for the clinical management of patients treated with hematopoietic transplantation. If the bone marrow transplantation service performs allogeneic transplants, the team leader's experience shall include the clinical management of patients receiving an allogeneic transplant. The responsibilities of the transplant team leader shall include overseeing the medical care provided by attending physicians, reporting required data to the Department, and responsibility for ensuring compliance with the all applicable project delivery requirements.

(B) one or more attending physicians with specialized training in pediatric and/or adult, as appropriate, bone marrow transplantation. If a service performs allogeneic transplants, at least one attending physician shall have specialized training in allogeneic transplantation, adult or pediatric, as appropriate. An attending physician shall be board-certified or board-eligible in hematology, medical oncology, immunology, or pediatric hematology/oncology, as appropriate.

(C) on-site availability of board-certified or board-eligible consulting physicians, adult and/or pediatric, as appropriate, in at least the following specialities: anatomic pathology with competence in graft versus host disease (services performing allogeneic transplants) and other opportunistic diseases (services performing allogeneic or autologous transplants), cardiology, gastroenterology, infectious diseases with experience in immuno-compromised hosts, nephrology, psychiatry, pulmonary medicine, and radiation oncology with experience in total body irradiation, and an intensivist who is board-certified in critical care.

(D) a transplant team coordinator, who shall be responsible for providing pre-transplant patient evaluation and coordinating treatment and post-transplant follow-up and care.

(E) a nurse to patient ratio necessary to provide care consistent with the severity of a patient's clinical status.

(F) nurses with specialized training in pediatric and/or adult, as appropriate, bone marrow transplantation, hematology/oncology patient care, administration of cytotoxic therapies, management of infectious complications associated with compromised host-defense mechanisms, administration of blood components, the hemodynamic support of the transplant patient, and managing immuno-suppressed patients.

(G) a pharmacist experienced with the use of cytotoxic therapies, use of blood components, the hemodynamic support of the transplant patient, and the management of immuno-suppressed patients.

(H) dietary staff capable of providing dietary consultations regarding a patient's nutritional status, including total parenteral nutrition.

(I) designated social services staff.

(J) designated physical therapy staff.

(K) data management personnel designated to the bone marrow transplantation service.

(L) for an applicant performing pediatric bone marrow transplants, a child-life specialist.

(v) In addition to the dedicated transplant team required in subdivision (iv), an applicant's staff shall include a patient ombudsman, who is familiar with the bone marrow transplantation service, but who is not a member of the transplant team.

(vi) An applicant shall develop and maintain patient management plans and protocols that include the following:

(A) therapeutic and evaluative procedures for the acute and long-term management of a patient.

(B) patient management and evaluation during the waiting, in-hospital and immediate post-discharge phases of the service.

(C) long-term management and evaluation, including education of the patient, liaison with the patient's attending physician, and the maintenance of active patient records for at least 5 years.

(D) IRB approval of all clinical research protocols, or if transplantation does not require an IRB-approved clinical research protocol, written policies and procedures that include at least the following: donor, if applicable, and recipient selection, transplantation evaluations, administration of the preparative regimen, post-transplantation care, prevention and treatment of graft-versus-host disease (allogeneic transplants), and follow-up care.

(vii) An applicant shall establish and maintain a written quality assurance plan.

(viii) An applicant shall implement a program of education and training for nurses, technicians, service personnel, and other hospital staff.

(ix) An applicant shall participate actively in the education of the general public and the medical community with regard to bone marrow transplantation, and make donation literature available in public areas of the institution.

(x) An applicant shall establish and maintain an active, formal multi-disciplinary research program related to the proposed bone marrow transplantation service.

(xi) An applicant shall operate, either on-site or under its direct control, a multi-disciplinary selection committee which includes, but is not limited to, a social worker, a mental health professional, and physicians experienced in treating bone marrow transplant patients.

(xii) A pediatric bone marrow transplant service shall maintain membership status in the Children’s Oncology Group (COG).

(xiii) For purposes of evaluating subsection (c), except subdivision (xii), the Department shall consider it prima facie evidence as to compliance with the applicable requirements if an applicant documents that the bone marrow transplantation service is accredited by the National Marrow Donor Program (NMDP) or the Foundation for the Accreditation of Cell Therapy (FACT).

(xiv) An applicant shall participate in Medicaid at least 12 consecutive months within the first two years of operation and continue to participate annually thereafter.

(d) Compliance with the following terms of approval:

(i) An applicant shall perform the applicable required volumes as follow:

(A) An adult bone marrow transplantation service that performs only allogeneic transplants, or both allogeneic and autologous transplants, shall perform at least 10 allogeneic transplants in the third 12-months of operation. If an adult service performs only autologous transplants, the service shall perform at least 10 autologous transplants in the third 12-months of operation. After the third 12-months of operation, an applicant shall perform at least 30 adult transplants in any 36-month consecutive period, with no fewer than 5 allogeneic in any 12-month period, beginning with the third 12-months of operation, and thereafter.

(B) A pediatric bone marrow transplantation service that performs only allogeneic transplants, or both allogeneic and autologous transplants, shall perform at least 10 allogeneic transplants in the third 12-months of operation. If a pediatric service performs only autologous transplants, the service shall perform at least 10 autologous transplants in the third 12-months of operation. After the third 12-months of operation, an applicant shall perform at least 30 pediatric transplants in any 36-month consecutive period, with no fewer than 5 allogeneic transplants in any 12-month period, beginning with the third 12-months of operation, and thereafter.

(C) A bone marrow transplantation service that performs both adult and pediatric bone marrow transplants shall specify whether each patient age 18-20 is included in the category of adult

procedures or the category of pediatric procedures. An applicant shall determine for each patient age 18-20 whether to record that patient as an adult or a pediatric procedure, but an applicant shall record each patient age 18-20 in only 1 category.

(ii) The applicant shall participate in a data collection network established and administered by the Department or its designee. The data may include, but is not limited to, annual budget and cost information, demographic and diagnostic information, primary and secondary diagnoses, whether the transplant procedure was a first or repeat transplant procedure, length of stay, the volume of care provided to patients from all payor sources, and other data requested by the Department and approved by the CON Commission. The applicant shall provide the required data on an individual basis for each designated licensed site; in a format established by the Department; and in a mutually-agreed upon media. The Department may elect to
verify the data through on-site review of appropriate records. In addition, an applicant shall report at least the following data for each patient:

(A) disease type.

(B) transplant type, i.e., related allogeneic, unrelated allogeneic, and autologous.

(C) source of hematopoietic stem cell, i.e., bone marrow, peripheral circulation, cord blood, etc.

(D) patient age, i.e., adult or pediatric as defined by these standards.

(E) data on 100-day, 6-month, 1-year, 2-year, and 5-year survival rates.

(F) relapse rates at 6-months, 1-year, and 5-years post-transplant.

(G) median follow-up, and patients lost-to-followup.

(H) cause(s) of death, if applicable.

(I) additional summary information, as applicable.

An applicant annually shall report for its bone marrow transplantation service annual and cumulative survival rates by type of transplant performed reported in actual number of transplants by disease category, transplant type, i.e., related allogeneic, unrelated allogeneic, and autologous; source of hematopoietic stem cell; patient age, i.e., adult or pediatric, as defined by these standards; and relapse rates at 100-days, 6-months, one year, and five years post-transplant. For purposes of these standards, procedure-related mortality is defined as death occurring within 100 days from bone marrow transplant.

(iii) The applicant shall maintain an organized institutional transplant registry for recording ongoing information on its patients being evaluated for transplant and on its transplant recipients and shall participate in the national and international registries applicable to the bone marrow transplantation service.

(iv) An applicant, to assure that the bone marrow transplantation service(s) will be utilized by all segments of the Michigan population, shall:

(A) not deny the services to any individual based on ability to pay or source of payment;

(B) provide the services to all individuals in accordance with the patient selection criteria developed by appropriate medical professionals, and approved by the Department; and

(C) maintain information by payor and non-paying sources to indicate the volume of care from each source provided annually.

Compliance with selective contracting requirements shall not be construed as a violation of this term.

(v) The applicant shall provide the Department with a notice stating the date on which the first transplant procedure is performed and such notice shall be submitted to the Department consistent with applicable statute and promulgated rules. An applicant that initially does not perform both allogeneic and autologous procedures also shall notify the Department when it begins to perform either allogeneic or autologous procedures, whichever was not performed initially by the applicant.

(vi) An applicant shall notify the Department immediately if the consulting agreement required pursuant to Section 3(10) of these standards is terminated prior to the end of the first 36-months of operation of the bone marrow transplantation service. The notification shall include a statement describing the reasons for the termination. An applicant shall have 30 days following termination of that agreement to enter into a written consulting agreement that meets the requirements of Section 3(10). An applicant shall provide the Department with a copy of that written consulting agreement.

(vii) The Department may use the information provided pursuant to Section 3(10) of these standards in evaluating compliance with the requirements of this section.

(2) The agreements and assurances required by this section, as applicable, shall be in the form of a certification authorized by the governing body of the applicant or its authorized agent.

Section 7. Documentation of projections

Sec. 7. An applicant required to project volumes of service under Section 3 shall specify how the volume projections were developed. This specification of projections shall include a description of the data source(s) used, assessments of the accuracy of these data, and the statistical method used to make the projections. Based on this documentation, the Department shall determine if the projections are reasonable.

Section 8. Requirements for approval – acquisition of a bone marrow transplantation service by a cancer hospital

(1) An applicant proposing to acquire an existing bone marrow transplantation service shall demonstrate that it meets all of the requirements of this subsection and shall not be required to be in compliance with section 3(5) and the department inventory.

(a) The total number of bone marrow transplantation services is not increased in the planning area as the result of the acquisition.

(b) As part of the acquisition of the bone marrow transplantation service, the acquisition or replacement of the cancer hospital, or for any other reasons, the location of the bone marrow transplantation service shall be located at its prior location or in space within the licensed cancer hospital site.

(c) The applicant is a cancer hospital as defined by these standards. The applicant shall, to the satisfaction of the Department, provide verification of PPS-exemption at the time of application, or shall demonstrate compliance with the following to the satisfaction of the Department:

(i) The applicant, or an affiliate of the applicant, operates a comprehensive cancer center recognized by the National Cancer Institute in conjunction with a Michigan university that is designated as a comprehensive cancer center, or the applicant is the Michigan university that is designated as a comprehensive cancer center.

(ii) The applicant commits to provide evidence, satisfactory to the Department, of approval as a PPS-exempt hospital within the time limits specified in subsection (g).

(d) The applicant demonstrates that it meets, directly or through arrangements with the hospital from which it acquires the bone marrow transplantation service, the requirements set forth under section 3(3), (6), (7), and (8), as applicable.

(e) The applicant agrees to either have a written consulting agreement as required by Section 3(10) or obtain a determination by the Department that such an agreement is not required because the existing bone marrow transplantation staff, services, and program substantially will continue to be in place after the acquisition.

(f) The applicant agrees and assures to comply, either directly or through arrangements with the hospital from which it acquires the bone marrow transplantation service, with all applicable project delivery requirements.

(g) If the applicant described in this subsection does not meet the Title XVIII requirements of the Social Security Act for exemption from PPS within 24 months after receiving CON approval under this section, the Department may extend the 24-month deadline to no later than the last session day permitted by the United States Constitution for the United States Congress then in session. Extension of the deadline shall require demonstration by the applicant, to the satisfaction of the Department, that there has been progress toward achieving the changes in federal law and regulations that are required to secure the PPS exemption. If the applicant fails to meet the Title XVIII requirements for PPS exemption within the 24-month period, or its possible extension, then the CON granted pursuant to this section shall expire automatically and will not be subject to further applications for acquisition. However, prior to the final deadline for the expiration of the CON, the prior holder of the (CON/authorization) to provide the bone marrow transplantation service may apply for acquisition of the service, pursuant to all the provisions of this section, except for subsection (c).

2. Applicants proposing to acquire an existing bone marrow transplantation service under this section shall not be subject to comparative review.

Section 9. Health Service Areas

Sec. 9. Counties assigned to each health service area are as follows:

HSA	COUNTIES		
1	Livingston	Monroe	St. Clair
	Macomb	Oakland	Washtenaw
	Wayne		
2	Clinton	Hillsdale	Jackson
	Eaton	Ingham	Lenawee
3	Barry	Calhoun	St. Joseph
	Berrien	Cass	Van Buren
	Branch	Kalamazoo	
4	Allegan	Mason	Newaygo
	Ionia	Mecosta	Oceana
	Kent	Montcalm	Osceola
	Lake	Muskegon	Ottawa
5	Genesee	Lapeer	Shiawassee

	6	Arenac	Huron	Roscommon
		Bay	Iosco	Saginaw
		Clare	Isabella	Sanilac
		Gladwin	Midland	
Tuscola				
		Gratiot	Ogemaw	
	7	Alcona	Crawford	Missaukee
		Alpena	Emmet	Montmorency
		Antrim	Gd Traverse	Oscoda
		Benzie	Kalkaska	Otsego
		Charlevoix	Leelanau	Presque Isle
		Cheboygan	Manistee	Wexford
	8	Alger	Gogebic	Mackinac
		Baraga	Houghton	Marquette
		Chippewa	Iron	Menominee
		Delta	Keweenaw	Ontonagon
		Dickinson	Luce	Schoolcraft

Section 10. Department Inventory of Bone Marrow Transplantation Services

Sec 10. The Department shall maintain, and provide on request, a listing of the Department Inventory of bone marrow transplantation services.

Section 11. Effect on prior CON Review Standards; comparative reviews

Sec. 11. (1) These CON review standards supersede and replace the CON Review Standards for Extrarenal Transplantation Services pertaining to bone marrow transplantation services approved by the CON Commission on June 22, 2005 and effective on September 21, 2005.

(2) Projects reviewed under these standards shall be subject to comparative review.

CORRECTION OF OBVIOUS ERRORS IN PUBLICATION

MCL 24.256(1) states in part:

"Sec. 56. (1) The State Office of Administrative Hearings and Rules shall perform the editorial work for the Michigan register and the Michigan Administrative Code and its annual supplement. The classification, arrangement, numbering, and indexing of rules shall be under the ownership and control of the State Office of Administrative Hearings and Rules, shall be uniform, and shall conform as nearly as practicable to the classification, arrangement, numbering, and indexing of the compiled laws. The State Office of Administrative Hearings and Rules may correct in the publications obvious errors in rules when requested by the promulgating agency to do so…"

CORRECTION OF OBVIOUS ERRORS IN PUBLICATION

MEMORANDUM

DATE: May 17, 2007

TO: Norene Lind, Regulatory Affairs Manager
State Office of Administrative Hearings and Rules

FROM: Jeannine Benedict, Administrative Rules Specialist
MDLEG, Office of Policy and Legislative Affairs

SUBJECT: Request for correction of Workers' Compensation Agency Rule 408.43k, pursuant to Administrative Procedures Act, Section 56(1), MCL 24.256(1).

The Workers' Compensation Agency, as a promulgating agency, is writing to request that the State Office of Administrative Hearings and Rules exercise its discretion to an obvious error in the Workers' Compensation Agency Rules, pursuant to Administrative Procedures Act, Section 56(1), MCL 24.256(1).

The error is in R 408.43k(b), which provides regulation of insurance carriers who write specific and aggregate excess insurance policy's for Michigan approved individual and group self-insurers. The Agency was contacted by one of its constituents, Safety National Casualty Corporation to inquire about language in the recent change to Rule 408.43k. Their review of the Rule led them to conclude that a typographical error existed. The Agency has looked into the comments of the representative of Safety National and has confirmed that the error exists.

The recent rule change to 408.43k adding a new paragraph (b) added the following language: "The policy shall contain no endorsements, provisions, or terms that increase the named insurer or insurers retentions or increase the amount that must be paid by the named insurer or insurers beyond the retentions reported on the declarations page of the policy and the Michigan certificate of specific/aggregate excess liability insurance. This provision does not apply to customary policy language that may call for increased payments by the insurer or insurers for failure to act or abide by a policy provision."

The first sentence of Rule 408.43k(b) was added to prevent additional liability or responsibility for payment being added to the "insured or insureds" policy (the policy being purchased). The only liability to be assumed is the liability assumed as stated on the declarations page and the Michigan certificate of excess insurance. The terms "insurer or insurers" refers to the insurance carrier selling the policy, where as the terms "insured or insureds" refers to the purchaser of the insurance policy. Therefore as currently written the language is in error.

The second sentence of Rule 408.43k(b), was added to preserve the right of the insurance company to include reasonable and historically customary penalty provisions in their policies and retain the ability to reduce payments or collect penalties based upon failure to abide by the customary language.

Therefore, in this sentence reference to “insurer or insurers” is in error as the provision is meant to apply to the policy’s purchaser ‘insured or insureds” not the policy’s seller, “insurer or insurers.”

The correction requested is to change all reference in Rule 408.43k(b) where “insurer or insurers” is currently written with “insured or insureds.” The Agency received no public comment when the Rule was presented.

The language of Rule 408.43k should read as follows (changes highlighted):

R 408.43k Aggregate excess liability insurance; specific excess liability insurance; individual self-insurer; group self-insurer.

Rule 13k. The bureau shall not recognize a policy of aggregate or specific excess liability insurance in considering the ability of a self-insurer to fulfill its financial obligations under the act, unless the policy is issued by a casualty insurance company authorized, as defined in section 108 of PA 218, MCL 500. to transact such business in this state. The policy shall comply with all of the following provisions unless specifically waived by the bureau. Policies issued that do not comply with all provisions of this rule may be considered grounds for termination of the employer's self-insured authority.

(a) The policy shall no be cancelable or nonrenewable unless written notice, sent by courier, registered mail or certified mail, is given to the other party to the policy and to the bureau not less than 60 days before termination by the party desiring to cancel or not renew the policy.

(b) The policy shall contain no endorsements, provisions, or terms that increase the named insured or insureds retentions or increase the amount that must be paid by the named insured or insureds beyond the retentions reported on the declarations page of the policy and the Michigan certificate of specific/aggregate excess liability insurance. This provision does not apply to customary policy language that may call for increased payments by the insured or insureds for failure to act or abide by a policy provision.

(c) A policy that has any type of commutation clause shall provide that any commutation effected under the policy shall not relieve the casualty insurance company of further liability with respect to claims and expenses unknown at the time of the commutation or in regard to any claim apparently closed at the time of initial commutation that is subsequently reopened by or through a competent authority. If the casualty insurance company proposes to settle its liability for future payments payable as compensation for accidents occurring during the term of the policy by the payment of a lump sum to the employer, to be fixed as provided in the commutation clause of the policy, then the casualty insurance company or the company's agent shall give the bureau not less then 30 days' prior notice of the commutation. Notice shall be by courier, registered mail or certified mail. If any commutation is affected, then the bureau has the right to direct that the sum be placed in trust for the benefit of the injured employee or employees entitled to future payments of compensation.

(d) The policy shall state that if a private self-insured employer becomes insolvent and is unable to make compensation payments and the self-insurers' security fund may have responsibility for making payment under section 537 of the act, then the excess insurance carrier shall make, directly to the claimants or their authorized representatives, payments as would have been made by the excess insurance carrier to the employer after it has been determined that the retention level has been reached on the excess liability insurance policy.

(e) The policy shall state that 100% of the following payments shall be applied toward reaching the retention level in the specific and aggregate excess liability policy:

(i) Benefit payments made by the employer as required in the act.

(ii) Benefit payments, as required in the act that are due and owing to claimants of the employer.

(iii) Benefit payments made on behalf of the employer, as required in the act, by a surety under a bond or through the use of other security required by the director.

(iv) Payments made by the self-insurers' security fund.

(v) Usual and customary claims allocated loss adjustment expenses.

(vi) Payments made, as specified in paragraphs (i), (iii), (iv) and (v) of this subdivision, that are reimbursable by the specific excess liability policy shall not be considered in reaching the aggregate excess liability retention.

cc: Agency Liaison, John Schrock

NOTICE OF PROPOSED AND ADOPTED AGENCY GUIDELINES

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(h) Notice of proposed and adopted agency guidelines."

NOTICE OF PROPOSED AND ADOPTED AGENCY GUIDELINES

May 31, 2007

State Office of Administrative Hearings and Rules (SOAHR)
Ottawa Building, 2nd Floor, 611 W. Ottawa
Lansing, Michigan 48909
SOAHR_Rules@michigan.gov

Notice of Proposed Guidelines:

To all interested parties:

The Michigan Land Bank Fast Track Authority (MLBFTA) in the State of Michigan Department of Labor and Economic Growth (DLEG) is hereby publishing notice of its intent to adopt the following guidelines. The guidelines are officially entitled "State of Michigan Land Bank Fast Track Authority Policies and Procedures For Property Acquisition and Disposition". Taken in their entirety, these guidelines establish the policies and procedures that the MLBFTA intends to follow as an agency. The guidelines to be adopted appear in two major parts. The first part, Background, represents the specific statutory authority that mandates the policies. The second part, Guidelines, details the six specific guidelines that the MLBFTA will use to make determinations about acquisition and disposition of properties acquired or conveyed from its inventory. The content of the entire guidelines to be adopted follows:

Guidelines, Policies and Procedures for Property Acquisition and Disposition:

Background:

The Michigan Land Bank Fast Track Authority (MLBFTA) was created with the passage of Public Act 258, 2003, known as the Land Bank Fast Track Act (Act), MCL 124.751-124.774, inclusive. The Act was signed into legislation by Governor Jennifer M. Granholm on January 5, 2004 with immediate effect. There are several statutory references that allow the MLBFTA to create operational and policy guidelines:
124.754 Powers.

Sec. 4.

(1) Except as otherwise provided in this act, an authority may do all things necessary or convenient to implement the purposes, objectives, and provisions of this act, and the purposes, objectives, and powers delegated to the board of directors of an authority by other laws or executive orders, including, but not limited to, all of the following:

(a) Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.

(l) Do all other things necessary or convenient to achieve the objectives and purposes of the authority or other laws that relate to the purposes and responsibility of the authority.

(10) An authority shall establish policies and procedures requiring the disclosure of relationships that may give rise to a conflict of interest. The governing body of an authority shall require that any member of the governing body with a direct or indirect interest in any matter before the authority disclose the member's interest to the governing body before the board takes any action on the matter.

124.755 Acquisition of property; accepting deed in lieu of foreclosure or sale; release of tax lien.

Sec. 5.

(1) Except as provided in section 4(8), an authority may acquire by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the authority considers proper, real or personal property, or rights or interests in real or personal property.

(2) Real property acquired by an authority by purchase may be by purchase contract, lease purchase agreement, installment sales contract, land contract, or otherwise, except as provided in section 4(8). The authority may acquire real property or rights or interests in real property for any purpose the authority considers necessary to carry out the purposes of this act, including, but not limited to, 1 or more of the following purposes:

(a) The use or development of property the authority has otherwise acquired.

(b) To facilitate the assembly of property for sale or lease to any other public or private person, including, but not limited to, a nonprofit or for profit corporation.

(c) To protect or prevent the extinguishing of any lien, including a tax lien, held by the authority or imposed upon property held by the authority.

(3) An authority may also acquire by purchase, on terms and conditions and in a manner the authority considers proper, property or rights or interest in property from 1 or more of the following sources:

(a) The department of natural resources under section 2101 or 2102 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2101 and 324.2102.

(b) A foreclosing governmental unit under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(c) The Michigan state housing development authority under the state housing development authority act of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.

(4) An authority may hold and own in its name any property acquired by it or conveyed to it by this state, a foreclosing governmental unit, a local unit of government, an intergovernmental entity created under the laws of this state, or any other public or private person, including, but not limited to, tax reverted property and property with or without clear title.

(5) All deeds, mortgages, contracts, leases, purchases, or other agreements regarding property of an authority, including agreements to acquire or dispose of real property, may be approved by and executed in the name of the authority.

(6) A foreclosing governmental unit may not transfer property subject to forfeiture, foreclosure, and sale under sections 78 to 78p of the general property tax act, 1893 PA 206, MCL 211.78 to 211.78p, until after the property has been offered for sale or other transfer under section 78m of the general property

tax act, 1893 PA 206, MCL 211.78m, and the foreclosing governmental unit has retained possession of the property under section 78m(7) of the general property tax act, 1893 PA 206, MCL 211.78m.

124.757 Disposition of property by authority; inventory and classification of property; title status and suitability for use; recording property transfer.

Sec. 7.

(1) Except as an authority otherwise agrees by intergovernmental agreement or otherwise, on terms and conditions, and in a manner and for an amount of consideration an authority considers proper, fair, and valuable, including for no monetary consideration, the authority may convey, sell, transfer, exchange, lease as lessor, or otherwise dispose of property or rights or interests in property in which the authority holds a legal interest to any public or private person for value determined by the authority…. The transfer and use of property under this section and the exercise by the authority of powers and duties under this act shall be considered a necessary public purpose and for the benefit of the public.

The attached guidelines, State of Michigan Land Bank Fast Track Authority Policies and Procedures For Property Acquisition and Disposition, set forth the policies of the Michigan Land Bank Fast Track Authority with respect to property acquisition and disposition of MLBFTA property. These guidelines are grounded in the statutory provisions identified above. The guidelines are as follows:

STATE OF MICHIGAN

LAND BANK FAST TRACK AUTHORITY

POLICIES AND PROCEDURES

FOR

PROPERTY ACQUISITION AND DISPOSITION

As originally approved by the Authority Board of Directors on September 1, 2004, and as approved in amended and restated form _____, 2007.

Contents

Foreword

The acquisition and disposition of properties, owned and managed by the State of Michigan Land Bank Fast Track Authority (the "Authority") is in accordance with the Land Bank Fast Track Act, 2003 PA 258 (the "Act") and the general policies and procedures contained herein. The Authority may amend these policies and procedures from time to time by resolution of the Board of Directors of the Authority (the "Authority Board").

The acquisition, use, maintenance and disposition of properties will be in accordance with the law and according to the bylaws of the Authority.

The purpose of the Authority is to assemble or dispose of public property, including tax reverted property, in a coordinated manner to foster the development of property, which in the judgment of the Authority Board should contribute to public good, and/or to promote economic growth in this State and in the local units of government within this State. Portions of the real property inventory of the Authority may be located within the geographical jurisdiction of a local land bank authority (the "local authority") created in accordance with the Act. The Authority is committed to the support and encouragement of the efforts of local authorities. Where possible, the Authority will reasonably coordinate its acquisition and disposition of properties within the geographic jurisdiction of a local authority with the local authority in order to advance the goals and priorities of the local authority.

Where a local land bank authority does not exist, the Authority will exercise its discretion in the acquisition and disposition of properties, coordinating with other units of local government.

As an owner of property in the State of Michigan, the Authority, within budgetary constraints, will make all reasonable efforts to maintain its property, to prevent the property from being a blighting influence, and to prevent the property from being a danger.

1. Acquisition of Property

The following criteria shall be considered in determining property to be acquired by the Authority, to facilitate development, in conjunction with the acquisition of property, to carry out the purpose of the Authority or to enhance the operation and function of the Authority:

1. Property strategic to implementing an economic development, neighborhood stabilization or revitalization plan or strategy undertaken by the Authority or other state agency.
2. Property strategic to implementing an economic development, neighborhood stabilization or revitalization plan or strategy undertaken by a local government entity pursuant to an intergovernmental agreement with the Authority.
3. Property strategic to implementing an economic development, neighborhood stabilization or revitalization plan or strategy undertaken by a nonprofit corporation pursuant to a community or neighborhood plan approved by the local political jurisdiction.
4. Property necessary to complete a land assembly project to enhance the marketability of or to protect property already held by the Authority.
5. Property that promotes health, safety and welfare.
6. Property that will generate financial resources for the operation and function of the Authority.

The Authority may acquire property as permitted by law. In determining the nature and extent of property to be acquired, the Authority shall consider the value of the property, the financial resources available for acquisition, the capacity of the Authority to own and manage the property, and the projected length of time required to convey or utilize the property for the purpose intended by the Authority in acquiring the property. All acquisitions shall require the approval of the Authority Board.

2. Disposition of Property

A. Conveyances. The following apply to the conveyance of property:

Real property conveyances by the Authority will be made directly by the Authority to the individual or entity responsible for undertaking the proposed development and in accordance with its stated use of the property.

2. The Authority will not convey real property to a local land bank authority for future speculative conveyances to third parties. However, simultaneous closings involving property of a local land bank authority and property of the Authority may occur.

3. Conveyance(s) will be made at the sole discretion of the Authority.

4. The consideration received by the Authority for any conveyance will be determined in the sole discretion of the Authority.

To ensure the Authority receives the tax to which it is entitled, it will annually provide notice to the local taxing authority of all property conveyed by it within the local taxing authority's jurisdiction. The Authority is entitled to receive the taxes on properties pursuant to statute.

B. Property Specific Criteria. The following criteria will be considered to determine property that will be conveyed by the Authority: (a) to facilitate development pursuant to 2003 PA 258, (b) to better carry out the purpose of the Authority, or (c) to enhance the operation and function of the Authority.

The Authority will consider the following factors in pricing and conveying property:

1. The proposed use of the property with emphasis on returning the property to taxable status or conveyance, which in the judgment of the Authority Board contributes to public good, including development which results in preserving and rehabilitating neighborhoods, promoting affordable homeownership and multiple family housing, as well as facilitating economic development and creating jobs.

2. The feasibility of the proposed development including financial resources, time frame for completion, site suitability including, but not limited to, size, location, land use, environmental issues, and infrastructure requirements.

3. The stability, ability, financial resources, nature, identity and capacity of the proposed purchaser including development experience and readiness to commence and complete development.

4. The potential impact of the conveyance on community and neighborhood plans approved by the local unit of government(s) with emphasis on preserving, stabilizing and restoring neighborhoods, improving and modernizing commercial and industrial areas, remediating environmental issues and promoting compatible uses of land.

5. The potential for the conveyance to generate proceeds to support and enhance the operation and function of the Authority.

The Authority may convey any property in its inventory in its sole discretion and establish disposition programs, including programs designed for specific areas.

C. Marketing Agreements with Local Land Bank Authorities. The Authority may enter into Marketing Agreements with local land bank authorities which provide for the following:

1. The sharing of information on a continuing basis to identify the parcels of property within a specific geographical area that are owned by the Authority and by the local land bank authority.
2. The ability of the Authority and local land bank authorities to solicit, receive and evaluate requests and proposals for the conveyance of property held by either the Authority or by a local land bank authority.
3. The ability of the Authority and local land bank authorities to prepare recommendation packages for conveyance including information on the proposed purchaser, the proposed use of the property, and the consideration.
4. Any notice requirements by the Authority and by the local land bank authority to each other of the proposed conveyance of any property.

Note: Marketing Agreements will provide that the party holding legal title of the property to be conveyed will make final approval of the conveyance. The Executive Director of the Authority may execute marketing agreements consistent with this policy.

D. Forms. The forms that the Authority uses to convey an interest in property include but are not limited to a quitclaim deed, a lease, a land contract and a grant of easement, as authorized by law.

3. Terms to be Considered

The following terms will be used to establish the consideration to be received by the Authority for the conveyance of real property.

It is presumed that the minimum monetary consideration will be no less than the Property Cost. "Property Cost" means the direct and indirect costs and expenses attributable to the property including, but not limited to, cost allocation for overhead, costs of acquisition, maintenance, repair, demolition, marketing and litigation to quiet title. The fair market value of the property will be established by an appraisal or other market valuation as determined by the Authority. The costs of the appraisal will be borne by the purchaser.

The Authority, in its sole discretion, will determine the consideration and terms of conveyance.

A. Requirements of Conveyance. The following requirements apply for conveyance:

1. The conveyance of property will be only by Quitclaim Deed.
2. The Authority, in its sole discretion, will determine all other terms and conditions of the conveyance.

B. Use. Prior to conveying the property, the range of uses that will be considered (which are not in any particular order of importance) include, but are not limited to the following:

1. Dedication to public use by a governmental entity.
2. Homeownership and affordable housing.
3. Return of the property to taxable status.
4. Land assemblage for economic development.

5. Provision for financial resources for operating functions of the Authority.
6. Green space or conservation purposes.
7. Elimination of blight.
8. Uses for childcare.
9. Dedication to use by a social, educational or faith based institution.
10. Recreation centers.
11. Agricultural uses.

4. Adjacent Lot Disposition Program

Property may be conveyed to an adjacent property owner in the Authority's sole discretion.

A. Qualified Property. Property eligible for inclusion in the Adjacent Lot Disposition Program must meet the following minimum criteria:
   1. The Property is zoned residential, used for residential purposes, and has a common boundary line with the Purchaser's property.
   2. The Property is not buildable according to current zoning and building codes.
   3. The Property is not part of a proposed plan or development supported by the local unit of government requiring land assembly.

B. Purchaser(s). To convey property to Purchaser(s), the Authority will determine the following:
   1. Purchaser(s) own a contiguous property.
   2. When more than one adjacent property owner exists and each wants the same adjacent Property, the Property may be conveyed in whole or divided and conveyed at the discretion of the Authority. The Authority staff may contact adjacent property owners to ascertain interest in the Property.
   3. Purchaser(s) has submitted a completed application to the Authority indicating the address(es) of the Properties to be purchased.
   4. Purchaser(s) has submitted any financial information requested by the Authority.
   5. Purchaser(s) has submitted any other information requested by the Authority.

C. Consideration.

   Property conveyed through the Adjacent Lot Disposition Program will have the consideration determined by the Authority, in its sole discretion.

5. Application Process

A. Application from an Individual. For Individual Purchasers, other than those applying for property offered through the Adjacent Lot Program, the Authority will consider a completed application from Individual Purchaser(s), which includes, but is not limited to the following:

1. The address(es), legal description(s), and recent photos of the property to be purchased.
2. The proposed development and/or use of the property.
3. The time frame for rehabilitation, improvement or development.
4. Financial documentation, which includes but is not limited to a Pre-Qualification Letter from a Lender (if financing the transaction).
5. A state or federal picture identification.

B. Applications from Organizations. For Organizations, including but not limited to, nonprofit corporations, partnerships, institutions, community groups, limited liability corporations, and joint ventures, the Authority will consider a completed application from Organizations, which includes, but is not limited to the following:

1. The address(es), legal description(s), and recent photos of the property to be purchased.
2. The proposed development and/or use of the property.
3. Names of key individuals on the Development Team.
4. The time frame for rehabilitation, improvement or development.
5. Financial documentation, which includes but is not limited to a Pre-Qualification Letter from a Lender (if financing the transaction).

C. Authority Review. The Authority staff will attempt, within ninety days of receiving a completed application, to complete a review of the application. After review, the Authority staff will notify the applicant of the determination or request additional information.

6. Conveyances Requiring Board Approval

and Executive Director Authority

A. Conveyances Requiring Board Approval. The Authority Board must approve all conveyances which are exceptions to these policies and procedures, which include, but are not limited to the following:

1. Any conveyance for which the ultimate use of the property will result in an exemption from property taxes.
2. Conveyances for projects containing greater than fifteen (15) parcels.
3. Conveyances involving transactions greater than $150,000 in value.

B. Executive Director Authority. The Executive Director of the Authority may enter into agreements to finalize property transactions and execute conveyances on behalf of the Authority regarding the following:

1. Conveyances issued pursuant to the Adjacent Lot Disposition Program.
2. Conveyances of fifteen (15) parcels or less, unless to a single purchaser during the Authority's fiscal year.
3. Conveyances approved by the Authority Board under subsection A, above.

Any transaction not specifically authorized in Section 6 shall require Authority Board approval.

Other restrictions notwithstanding, the Executive Director may contract for demolition of a structure on Authority owned property provided that the demolition contract is less than $50,000.00, and the contract complies with State budget and procurement requirements.

The Executive Director may enter into a Temporary License or an Agreement & Consent To Enter State-Owned Property as determined by the Executive Director to be in the best interest of the Authority.

C. Reporting Requirement. All conveyances entered into by the Executive Director will be reported in writing to the Authority Board at the next Authority Board meeting.

Note: All references to powers refer to powers of the Authority except where the authority of the Executive Director is expressly mentioned.

Time-line for adoption of this guideline:

The MLBFTA requests that these guidelines be adopted and take effect July 24, 2007. In conformity with Section 3(6) of the Administrative Procedures Act of 1969, MCL 24.203(6), these guidelines are a statement of policy which the agency intends to follow, which does not have the force or effect of law and which binds the agency but does not bind any other person.

Opportunity to express comments regarding these guidelines:

The recipients of this notice of guidelines may express any views or arguments regarding the proposed guidelines, the guidelines' effect on a person or agency, or the proposed effective date of the guidelines. Written or electronic comments will be accepted for at least 35 calendar days from the mailing date of this notice or until 5 p.m. on Thursday, July 19, 2007, whichever date is later.

All written and electronic comments should be directed to the following address:

Michigan Land Bank Fast Track Authority
State of Michigan
Department of Labor and Economic Growth
300 North Washington Square – 4th Floor
Lansing, Michigan 48913
ATTN: Jeannine Benedict, Administrative Rules Specialist

E-mail: benedictj@michigan.gov
Phone: (517) 335-2626

Sincerely,

Semone M. James, Executive Director
Michigan Land Bank Fast Track Authority

EXECUTIVE ORDERS
AND
EXECUTIVE REORGANIZATION ORDERS

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders."

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 30

CONSOLIDATING HUMAN RESOURCES OPERATIONS AND ABOLISHING THE DEPARTMENT OF CIVIL SERVICE

DEPARTMENT OF CIVIL RIGHTS
DEPARTMENT OF CIVIL SERVICE
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
DEPARTMENT OF MANAGEMENT AND BUDGET

EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, Section 5 of Article XI of the Michigan Constitution of 1963 empowers the Civil Service Commission to fix rates of compensation for all classes of positions, to approve or disapprove all disbursements for personal services, to make rules and regulations covering all personnel transactions, and to regulate all conditions of employment in the classified state civil service;

WHEREAS, the transfer of functions relating to management of state employees and related programs will result in enhanced accountability, more effective control of personnel management functions, and enhanced service to both state agencies and state employees;

WHEREAS, the consolidation of state government functions providing services to other state departments and agencies will eliminate unnecessary duplication and facilitate more effective and efficient coordination of executive branch functions;

WHEREAS, the Department of Management and Budget is required to minimize the duplication of activities among state agencies, between state agencies and businesses, to effect a better organization and consolidation of functions among state agencies, and to establish, administer, operate, or provide centralized services when advantageous to this state;

WHEREAS, consolidation of human resource operations within one principal state department will promote a unified approach to human resource administration within the executive branch of state government and improve the effectiveness of the administration human resource operations and related functions;

WHEREAS, a reduction in the number of principal state departments and improvements in the organization of state government are necessary to provide Michigan residents with improved delivery of state services;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government and to reduce the number of principal state departments;

NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS
As used in this Order:

A. "Civil Service Commission" or "Commission" means the commission required under Section 5 of Article XI of the Michigan Constitution of 1963.

B. "Department of Civil Service" means the principal department of state government created under Section 200 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.300.

C. "Department of Management and Budget" or "Department" means the Department of Management and Budget, the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121.

D. "HRMN System" means the State of Michigan's statewide Human Resource Management Network System that delivers payroll, personnel, employee benefits, and other human resource functionality and data exchange, and includes, but is not limited to, the standards, guidelines, processes, procedures, practices, rules, regulations, hardware, and software for the operation of the system.

E. "Office of the State Budget Director" means the office created within the Department of Management and Budget under Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

F. "Office of the State Employer" means the autonomous office created within the Department of Management and Budget by Executive Order 1979-5, whose duties include, but are not limited to, those assigned by Executive Orders 1979-5, 1981-3, 1988-6, 2002-18, and 2004-31.

G. "State Personnel Director" means the administrative and principal executive officer of the Civil Service Commission provided for under Section 5 of Article XI of the Michigan Constitution of 1963 and Section 204 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.304.

H. "Type I transfer" means that type of transfer as defined in Section 3(a) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

I. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. DEPARTMENT OF MANAGEMENT AND BUDGET

A. Board of Ethics

1. The Board of Ethics created under 1973 PA 196, MCL 15.341 to MCL 15.348, and all the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of the Board of Ethics are transferred by Type I transfer to the Department of Management and Budget.

2. With the consent of the Civil Service Commission, the State Personnel Director shall continue to designate an employee of the Commission, acceptable to the Board of Ethics, to act as Executive Secretary of the Board of Ethics and provide clerical or administrative assistance from the Civil Service Commission as the Board of Ethics may, from time to time, request.

B. State Officers Compensation Commission

1. The State Officers Compensation Commission created under Section 12 of Article IV of the Michigan Constitution and all the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of the State Officers Compensation Commission are transferred by Type I transfer to the Department of Management and Budget. The State Officers Compensation Commission is assigned to the Department of Management and Budget for the purposes of administration, budgeting, procurement, and related management functions. With the consent of the Civil Service Commission, the State Personnel Director shall continue to act as the Secretary to the State Officers Compensation Commission.

2. The members of the State Officers Compensation Commission shall receive no compensation but shall be entitled to their actual and necessary expenses incurred in the performance of their duties subject to available appropriations to be paid from the appropriation made to the Department of Management and Budget for the Civil Service Commission.

C. Civil Service Commission

1. The Civil Service Commission is transferred to the Department of Management and Budget. The Commission shall be an autonomous entity within the Department and shall possess the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources vested in the Commission under Section 5 of Article XI of the Michigan Constitution of 1963 and transferred to the Commission under this Order. The budgeting, procurement, personnel, and management-related functions of the Commission shall be retained by the Commission and shall be exercised by the Commission independently of the Department. As used in this paragraph, "budgetary resources" include the funds required to be appropriated to the Commission under Section 5 of Article XI of the Michigan Constitution of 1963 equal to not less than 1 percent of the aggregate payroll of the classified state civil service for a prior fiscal year, as certified by the Commission.

2. The Civil Service Commission shall retain all of the constitutional authority vested in the Commission under Section 5 of Article XI of the Michigan Constitution of 1963, including, but not limited to, authority to classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified state civil service.

3. As required by Section 5 of Article XI of the Michigan Constitution of 1963, the administration of the Civil Service Commission's power shall continue to be vested in the State Personnel Director, who shall be a member of the state classified service and who shall be responsible to and selected by the Commission after open competitive examination. The State Personnel Director shall continue to be the principal executive officer of the Commission. All of the authority, powers, duties, and functions of the

Director of the Department of Civil Service under Executive Order 2002-19, MCL 38.1173, are transferred to the State Personnel Director.

4. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, and other funds of the Department of Civil Service under any of the following are transferred to the Civil Service Commission:

a. 1976 PA 199, MCL 15.501 to 15.512.

b. Section 6 of 1976 PA 169, MCL 15.406.

c. Section 237 of The Management and Budget Act, 1984 PA 431, MCL 18.1237.

d. Sections 281 and 281a of The Management and Budget Act, 1984 PA 431, MCL 18.1281 and 18.1281a.

e. Section 454 and 455 of The Management and Budget Act, 1984 PA 431, MCL 18.1454 and 18.1455.

f. Executive Order 2002-13, MCL 38.1172. The Commission shall actively cooperate with the Office of the State Employer and provide information as requested by the Office of the State Employer on matters relating to state employee benefits programs to enable the Office of the State Employer to fulfill its duties and obligations under Executive Orders 1979-5, 1981-3, 1988-6, 2002-18, and 2004-31. As used in this paragraph, "state employee benefits programs" include, without limitation, all of the following:

i. Health screening programs.

ii. Group insurance plans for medical, dental, vision, disability, life, long-term care, and other similar benefits.

iii. Pre-tax benefit programs.

iv. Health benefit continuation programs under the federal Consolidated Omnibus Budget Reconciliation Act of 1986, as amended ("COBRA"), and other benefit continuation programs.

g. Executive Order 2002-19, MCL 38.1173. The Commission shall actively cooperate with the Office of the State Budget Director and shall provide information as requested by the Office of the State Budget Director relating to the HRMN System to enable the Office of the State Budget Director to assure compliance with The Management and Budget Act, 1984 PA 431, MCL 18.1101 to 18.1594.

h. Section 10j of 1951 PA 51, MCL 247.660j.

i. Section I.D of Executive Order 2000-9, MCL 388.996.

j. Section 4 of the Higher Education Loan Authority Act, 1975 PA 222, MCL 390.1154.

k. 1976 PA 154, MCL 390.1201 to 390.1207.

l. Section 2 of 1978 PA 260, MCL 393.352.

m. Section 7 of 1982 PA 540, MCL 397.17.

n. Sections 103 and 203 of the Michigan Museum Act, 1990 PA 325, MCL 399.403 and 399.503.

o. Section 4 of the Correctional Industries Act, 1968 PA 15, MCL 800.324.

5. Except as otherwise provided in this Order, all the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources pertaining to the administration of human resource operations within the principal departments of the executive branch of state government, including, but not limited to, administration of human resource processes, human resource programs, disbursements for personnel services, personnel transactions, and employee benefits, are transferred to the Civil Service Commission. Upon the completion of the transfers authorized by this Order, all authority, power, duties, functions, responsibilities, personnel, equipment, and budgeting resources within the executive branch of state government relating to human resource operations shall be conducted by the Commission. The transfers under this paragraph shall not be construed to inhibit the head of a principal department, elected or appointed, from supervising the powers, duties, and functions of the principal department or to alter the powers and duties of the Office of the State Employer. The transfers under this paragraph shall not alter the authority of a department head, agency head, or a state officer to act as an appointing authority for department or agency personnel, and appointing authorities shall retain the authority to do any of the following:

a. Direct and control the activities of employees, subject to the constitutional authority of the Civil Service Commission to regulate all conditions of employment in the state classified civil service.

b. Participate in the recruitment of employees.

c. Advise the Civil Service Commission on qualifications for positions.

d. Process employee grievances.

e. Conduct in-service training of employees.

f. Establish or abolish positions.

g. Evaluate employees and recommend employees for promotion.

h. Select employees for positions based upon eligibility lists provided by the Civil Service Commission.

6. The Civil Service Commission shall continue to operate a human resource services center ("MI HR Service Center and "MI HR Gateway") to assist state employees and the principal departments of the executive branch of state government with human resource operations issues and may develop standardized policies and procedures for administration of human resource operations transferred to the Commission under this Order.

7. All of the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of the Advisory Board to the Michigan Internship Office under Section 4 of 1976 PA 154, are transferred to the Civil Service Commission. The Advisory Board to the Michigan Internship Office is abolished.

8. Any of the remaining authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, budgetary resources, and discretionary activities of the Department of Civil Service not otherwise transferred to the Department of Management and Budget or the Civil Service Commission under this Order are transferred by Type III transfer to the Department of Management and Budget. The Department of Civil Service is abolished.

III. DEPARTMENT OF CIVIL RIGHTS

A. Michigan Women's Commission

1. The position of the Director of the Department of Civil Service, or his or her representative, as an ex officio member of the Michigan Women's Commission under Section 1 of 1968 PA 1, MCL 10.71, is transferred to the State Personnel Director or his or her designee from within the Civil Service Commission.

IV. DEPARTMENT OF LABOR AND ECONOMIC GROWTH

A. Interagency Council on Spanish Speaking Affairs

1. The position of the Director of the Department of Civil Service, or his or her authorized representative, as a member of the Interagency Council on Spanish-Speaking Affairs restored under Section III.E.1 of Executive Order 2003-18, MCL 445.2011, is transferred to the State Personnel Director or his or her designee from within the Civil Service Commission.

V. IMPLEMENTATION BY CIVIL SERVICE COMMISSION

A. The State Personnel Director and the director of each principal department shall jointly identify the program positions and administrative function positions that will be transferred to the Civil Service Commission under Section II.C.5. The State Personnel Director and the directors of the principal departments within the executive branch of state government shall make every effort to develop the agreements specifying the positions to be transferred by the effective date of this Order. In the event of a failure to reach an agreement on positions to be transferred under this Order, the State Personnel Director shall develop a written recommendation specifying the positions to be transferred and submit the recommendation to the Civil Service Commission for consideration and approval. All transfers to the Commission under Section II.C.5 shall be consistent with this Order and documented by a memorandum of understanding between the director of each principal department affected by this Order and the State Personnel Director.

B. For the purpose of implementing this Order or facilitating the administration of human resource operations, the Civil Service Commission may enter into a written agreement, including a service level agreement, with any other department or agency regarding the performance of human resource operations.

C. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred under this Order to the Civil Service Commission are transferred to the Commission.

D. The Civil Service Commission shall provide executive direction and supervision for the implementation of the transfers to the Civil Service Commission under this Order. The functions transferred to the Commission shall be administered under the direction and supervision of the Commission.

E. The Civil Service Commission shall immediately initiate coordination with departments and agencies within the executive branch of state government to facilitate the transfers to the Commission under this Order. Each principal department affected by the transfers to the Commission under this Order shall

issue, after consultation with the Commission, a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the transferring department related to the transfers to the Commission under this Order.

F. Departments, agencies, and state officers within the executive branch of state government shall fully and actively cooperate with the Civil Service Commission in the implementation of this Order. The Civil Service Commission may request the assistance of other departments, agencies, and state officers with respect to personnel, budgeting, procurement, telecommunications, information systems, legal services, and other issues related to implementation of the transfers under this Order, and the departments and agencies shall provide the assistance requested.

G. The Civil Service Commission shall administer the assigned functions transferred to the Commission under this Order in such ways as to promote efficient administration and may make internal organizational changes within the Commission as may be administratively necessary to complete the realignment of responsibilities under this Order.

H. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred under this Order to the Civil Service Commission are transferred to the Commission.

VI. IMPLEMENTATION BY DEPARTMENT OF MANAGEMENT AND BUDGET

A. Except as otherwise provided in this Order, the Director of the Department of Management and Budget shall provide executive direction and supervision for the implementation of the transfers to the Department under this Order. The functions transferred to the Department shall be administered under the direction and supervision of the Director of the Department.

B. The Director of the Department of Management and Budget shall immediately initiate coordination with departments and agencies within the executive branch of state government to facilitate the transfers to the Department under this Order. Each principal department affected by the transfers to the Department under this Order shall issue, after consultation with the Director of the Department, a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the transferring department related to the transfers to the Department under this Order.

C. The Director of the Department of Management and Budget shall administer the assigned functions transferred to the Department under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

D. Except as otherwise provided in this Order, any authority, duties, powers, functions, and responsibilities transferred to the Department of Management and Budget under this Order, and not otherwise mandated by law, may in the future be reorganized to promote efficient administration by the Director of the Department.

E. The Director of the Department of Management and Budget may perform a duty or exercise a power conferred by law or executive order upon the Director of the Department at the time and to the extent the duty or power is delegated to the Director of the Department by law or order.

F. The Director of the Department of the Department of Management and Budget in writing may delegate within the Department a duty or power conferred on the Director of the Department by this Order or by other law, and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the Director of the Department.

G. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred under this Order to the Department of Management and Budget are transferred to the Department.

VII. MISCELLANEOUS

A. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state's financial management system necessary to implement this Order.

B. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

C. All rules, orders, contracts, and agreements relating to the functions transferred to the under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

D. Nothing in this Order shall be construed to diminish or limit the power of the Civil Service Commission to exercise authority granted to the Commission under Section 5 of Article XI of the Michigan Constitution of 1963.

E. A copy of this Order shall be transmitted to the members of the Civil Service Commission and the State Personnel Director. The Civil Service Commission is urged to take any action necessary to implement the provisions of this Order.

F. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective August 26, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 24th day of May, in the year of our Lord, two thousand and seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____

SECRETARY OF STATE

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 31
CONSOLIDATING INTERNAL AUDIT FUNCTIONS
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, Section 53 of Article IV of the Michigan Constitution of 1963 limits the duties of the legislative Auditor General to the conduct of post audits of financial transactions and accounts of this state and state entities and performance post audits thereof;

WHEREAS, under Section 485 of The Management and Budget Act, 1984 PA 431, MCL 18.1485, each principal department within the executive branch is required to establish and maintain its own internal accounting and administrative control system and appoint its own internal auditor;

WHEREAS, the Department of Management and Budget is required to minimize the duplication of activities among state agencies, between state agencies and businesses, to effect a better organization and consolidation of functions among state agencies, and to establish, administer, operate, or provide centralized services when advantageous to this state;

WHEREAS, consolidation of internal audit functions within the Department of Management and Budget will promote a more unified approach to internal audit functions within the executive branch of state government and improve the effectiveness of financial controls;

WHEREAS, consolidating state internal audit functions will increase administrative efficiencies;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Management and Budget" means the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121.

B. "Office of the State Budget Director" means the office created within the Department of Management and Budget under Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

C. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

II. TRANSFERS TO OFFICE OF THE STATE BUDGET DIRECTOR

A. All the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of internal auditors within principal departments of this state under Sections 486 and 487 of The Management and Budget Act, 1984 PA 431, MCL 18.1486 and 18.1487, are transferred to the Office of the State Budget Director. The transfers under this paragraph shall not be construed to inhibit the head of a principal department, elected or appointed, from supervising the powers, duties, and functions of that principal department.

B. All of the authority, powers, duties, functions, responsibilities of a principal department of this state to appoint and supervise an internal auditor for a principal department under Section 486 of The Management and Budget Act, 1984 PA 431, MCL 18.1486, are transferred to the State Budget Director. The State Budget Director may appoint an internal auditor to serve as the internal auditor for one or more principal departments.

C. The Office of the State Budget Director shall operate an internal audit services center to assist departments and agencies within the executive branch with accounting functions and may develop standardized policies and procedures for the performance of accounting functions.

III. ADMINISTRATION OF INTERNAL AUDIT FUNCTIONS

A. Each internal auditor appointed by the State Budget Director shall be a member of the classified state civil service. Each internal auditor shall report to and be under the general supervision of the State Budget Director.

B. A person shall not prevent or prohibit an internal auditor from initiating, carrying out, or completing any audit or investigation. An internal auditor shall be protected pursuant to the Whistleblowers' Protection Act, 1980 PA 469, MCL 15.361 to 15.369.

C. An internal auditor appointed by the State Budget Director under Section II.B shall do all of the following:

1. Receive and investigate any allegations that false or misleading information was received in evaluating a principal department's internal accounting and administrative control system or in connection with the preparation of the biennial report on the system.

2. Conduct and supervise audits relating to financial activities of a principal department's operations.

3. Review existing activities and recommend policies designed to promote efficiency in the administration of a principal department's programs and operations.

4. Recommend policies for activities to protect this state's assets under the control of a principal department, and to prevent and detect fraud and abuse in the principal department's programs and operations.

5. Review and recommend activities designed to ensure that a principal department's internal financial control and accounting policies are in conformance with the accounting directives issued by the Office

of the State Budget Director pursuant to Sections 421 and 444 of The Management and Budget Act, 1984 PA 431, MCL 18.1421 and 18.1444.

6. Provide a means to keep the State Budget Director and the head of a principal department fully and currently informed about problems and deficiencies relating to the administration of the principal department's programs and operations, and the necessity for, and progress of, corrective action.

7. Conduct other audit and investigative activities as assigned by the State Budget Director.

8. Prepare biennial reports for principal departments required under Section 485(4) of The Management and Budget Act, 1984 PA 431, MCL 18.1485.

D. Each internal auditor appointed by the State Budget Director under Section II.B shall adhere to appropriate professional and auditing standards in carrying out any financial or program audits or investigations.

E. Each internal auditor appointed by the State Budget Director under Section II.B shall report immediately to the State Budget Director and the principal department head if the internal auditor becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs or operations of a principal department or agencies within the department.

IV. IMPLEMENTATION OF TRANSFERS

A. The State Budget Director and the directors of all principal departments within the executive branch of state government shall jointly identify the program positions and administrative function positions that will be transferred to the Office of the State Budget Director under this Order. The State Budget Director and the directors of all principal departments shall make every effort to develop the agreements specifying the positions to be transferred by the effective date of this Order. In the event of a failure to reach an agreement on positions to be transferred under this Order, the State Budget Director shall develop a written recommendation specifying the positions to be transferred and submit the recommendation to the Governor for consideration and approval. All transfers to the Office of the State Budget Director shall be consistent with this Order and documented by a memorandum of understanding between the director of each principal department affected by this Order and the State Budget Director.

B. For the purpose of implementing this Order or facilitating the performance of internal audit functions, the Office of the State Budget Director may enter into a written agreement, including a service level agreement, with any other department or agency regarding the performance of internal audit functions.

C. The State Budget Director shall provide executive direction and supervision for the implementation of all transfers to the Office of the State Budget Director under this Order.

D. The State Budget Director shall immediately initiate coordination with department and agencies within the executive branch of state government to facilitate the transfers under this Order. Each principal department affected by the transfers under this Order shall issue, after consultation with the State Budget Director, a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the transferring department related to the transfers under this Order.

E. Departments, agencies, and state officers within the executive branch of state government shall fully and actively cooperate with the Office of the State Budget Director in the implementation of this Order.

The State Budget Director may request the assistance of other departments, agencies, and state officers with respect to personnel, budgeting, procurement, telecommunications, information systems, legal services, and other issues related to implementation of the transfers under this Order, and the departments and agencies shall provide the assistance requested.

F. The State Budget Director shall administer the functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

G. The State Budget Director may delegate within the Office of the State Budget Director a duty or power conferred on the State Budget Director by this Order or by other law, and the individual to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the State Budget Director.

H. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred under this Order to the Office of the State Budget Director are transferred to the Office of the State Budget Director.

V. MISCELLANEOUS

A. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state's financial management system necessary to implement this Order.

B. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

C. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective October 1, 2007 at 12:01 a.m.

Given under my hand this 24th day of May, in the year of our Lord, two thousand and seven.

_____
JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____
Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 32
CONSOLIDATING ACCOUNTING FUNCTIONS
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, the Department of Management and Budget is required to minimize the duplication of activities among state agencies, between state agencies and businesses, to effect a better organization and consolidation of functions among state agencies, and to establish, administer, operate, or provide centralized services when advantageous to this state;

WHEREAS, consolidation of state accounting functions within the Department of Management and Budget will promote a more unified approach to accounting of state expenditures and funds within the executive branch of state government and improve the effectiveness of accounting functions;

WHEREAS, consolidating state accounting functions will increase administrative efficiencies;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Accounting functions" includes all of the following:

1. Processing of expenditure transactions, including, but not limited to, payments.

2. Processing of revenue transactions, including, but not limited to, processing of receipts.

3. Processing of journal vouchers.

4. Processing of budgetary transactions.

5. Preparation of financial reconciliations.

6. Preparation of financial reports and projections.

B. "Department of Management and Budget" means the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121.

C. "Office of the State Budget Director" means the office created within the Department of Management and Budget under Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

D. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

II. TRANSFERS TO OFFICE OF THE STATE BUDGET DIRECTOR

A. All the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources pertaining to accounting functions within the executive branch of state government, are transferred to the Office of the State Budget Director. Upon the completion of the transfers authorized by this Order, all authority, power, duties, functions, responsibilities, personnel, equipment, and budgeting resources within the executive branch of state government relating to accounting functions shall be administered by the Office of the State Budget Director. The transfers under this paragraph shall not be construed to inhibit the head of a principal department, elected or appointed, from supervising the statutory powers, duties, and functions of that principal department.

B. All the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of the Department of Management and Budget or the Director of the Department of Management and Budget under Section 283 of The Management and Budget Act, 1984 PA 431, MCL 18.1283, are transferred to the Office of the State Budget Director.

C. All the authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of the Department of Management and Budget or the Director of the Department of Management and Budget under Article IV of The Management and Budget Act, 1984 PA 431, MCL 18.1401 to 18.1499, are transferred to the Office of the State Budget Director.

D. The Office of the State Budget Director shall operate an accounting functions services center to assist departments and agencies within the executive branch with accounting functions and may develop standardized policies and procedures for the performance of accounting functions.

III. IMPLEMENTATION OF TRANSFERS

A. The State Budget Director and the directors of all principal departments within the executive branch of state government shall jointly identify the program positions and administrative function positions that will be transferred to the Office of the State Budget Director under this Order. The State Budget Director and the directors of the principal departments shall make every effort to develop the agreements specifying the positions to be transferred by the effective date of this Order. In the event of a failure to reach an agreement on positions to be transferred under this Order, the State Budget Director shall develop a written recommendation specifying the positions to be transferred and submit the recommendation to the Governor for consideration and approval. All transfers to the Office of the State Budget Director shall be consistent with this Order and documented by a memorandum of understanding between the director of each principal department affected by this Order and the State Budget Director.

B. For the purpose of implementing this Order or facilitating the performance of accounting functions, the Office of the State Budget Director may enter into a written agreement, including a service level agreement, with any other department or agency regarding the performance of accounting functions.

C. The State Budget Director shall provide executive direction and supervision for the implementation of all transfers to the Office of the State Budget Director under this Order.

D. The State Budget Director shall immediately initiate coordination with department and agencies within the executive branch of state government to facilitate the transfers under this Order. Each principal department affected by the transfers under this Order shall issue, after consultation with the State Budget Director, a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the transferring department related to the transfers under this Order.

E. Departments, agencies, and state officers within the executive branch of state government shall fully and actively cooperate with the Office of the State Budget Director in the implementation of this Order. The State Budget Director may request the assistance of other departments, agencies, and state officers with respect to personnel, budgeting, procurement, telecommunications, information systems, legal services, and other issues related to implementation of the transfers under this Order, and the departments and agencies shall provide the assistance requested.

F. The State Budget Director shall administer the functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

G. The State Budget Director may delegate within the Office of the State Budget Director a duty or power conferred on the State Budget Director by this Order or by other law, and the individual to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the State Budget Director.

H. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred under this Order to the Office of the State Budget Director are transferred to the Office of the State Budget Director.

IV. MISCELLANEOUS

A. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state's financial management system necessary to implement this Order.

B. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

C. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective October 1, 2007 at 12:01 a.m.

Given under my hand this 24th day of May, in the year of our Lord, two thousand and seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____
Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 33

ABOLISHING THE ENVIRONMENTAL EDUCATION ADVISORY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Environmental Education Advisory Committee will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

B. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

C. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. Any and all of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Environmental Education Advisory Committee authorized under Section 2504 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.2504, are transferred by Type III transfer to the Department of Environmental Quality. The Environmental Education Advisory Committee is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Environmental Quality shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Environmental Quality in such ways as to promote efficient administration.

C. All records, property, unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Environmental Education Advisory Committee for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Environmental Quality.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 29, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 24th day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____
Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 34

ABOLISHING THE GREAT LAKES PROTECTION FUND TECHNICAL ADVISORY BOARD

DEPARTMENT OF ENVIRONMENTAL QUALITY

EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Great Lakes Protection Fund Technical Advisory Board will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS
As used in this Order:

A. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

B. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

C. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Great Lakes Protection Fund Technical Advisory Board created under Section 32908 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.32908, are transferred by Type III transfer to the Department of Environmental Quality.

B. The Great Lakes Protection Fund Technical Advisory Board is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Environmental Quality shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Environmental Quality in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Great Lakes Protection Fund Technical Advisory Board for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Environmental Quality.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 29, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 24th day of May, in the year of our Lord, two thousand seven.

_____
JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____
Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 35
ABOLISHING THE ORGANIC ADVISORY COMMITTEE

DEPARTMENT OF AGRICULTURE

EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Organic Advisory Committee will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS
As used in this Order:

A. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

B. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

C. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. Any and all of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Organic Advisory Committee created within the Department of Agriculture under Section 25 of the Michigan Organic Products Act, 2000 PA 316, MCL 286.925, are transferred by Type III transfer to the Department of Agriculture.

B. The Organic Advisory Committee is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Agriculture in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Organic Advisory Committee for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Agriculture.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 29, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 24th day of May, in the year of our Lord, two thousand seven.

_____
JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____
Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 36

ABOLISHING THE CONSUMER FOOD SAFETY EDUCATION FUND ADVISORY COMMITTEE

DEPARTMENT OF AGRICULTURE

EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Consumer Food Safety Education Fund Advisory Committee will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

B. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

C. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. Any and all of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Consumer Food Safety Education Fund Advisory Committee authorized under Section 4117 of the Food Law of 2000, 2000 PA 92, MCL 289.4117, are transferred by Type III transfer to the Department of Agriculture.

B. The Consumer Food Safety Education Fund Advisory Committee is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Agriculture in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Consumer Food Safety Education Fund Advisory Committee for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Agriculture.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 29, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 24th day of May, in the year of our Lord, two thousand seven.

_____

JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____

Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 37

ABOLISHING THE MICHIGAN TASK FORCE ON CERVICAL CANCER AWARENESS

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, the Michigan Task Force Cervical Cancer Awareness has completed the work for which it was created;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

A. The Michigan Task Force on Cervical Cancer Awareness created by Executive Order 2006-5 is abolished.

The provisions of this Order are effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 24th day of May, in the year of our Lord, two thousand seven.

_____

JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____

Secretary of State

ENROLLED SENATE AND HOUSE BILLS SIGNED INTO LAW OR VETOED (2007 SESSION)

Mich. Const. Art. IV, §33 provides: "Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated."

Mich. Const. Art. IV, §27, further provides: "No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house."

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year."

ENROLLED SENATE AND HOUSE BILLS SIGNED INTO LAW OR VETOED (2007 SESSION)

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
1		191	Yes	3/1	3/1	3/1/07	Occupations; accounting; qualifications for certified public accountants; revise, and provide certain changes to the peer review requirement. **(Sen. R. Richardville)**
2		184	Yes	3/19	3/19	3/19/07	State financing and management; budget; expenditure exceeding appropriation level; require **notification.** **(Sen. R. Jelinek)**
3		166	Yes	3/19	3/19	3/19/07	Appropriations; zero budget; supplemental appropriations; provide for certain fiscal years. **(Sen. R. Jelinek)**
4		014	Yes	3/22	3/22	3/22/07	Agriculture; other; loan repayment for sugar beet cooperatives; extend. **(Sen. J. Barcia)**
5		176	Yes	3/22	3/23	3/23/07	Health facilities; other; appropriated amount of quality assurance assessment collected; increase. **(Sen. D. Cherry)**
6		221	Yes	4/30	4/30	4/30/07	Appropriations; supplemental; negative supplemental school aid bill; provide for fiscal year 2006-2007. **(Sen. R. Jelinek)**
7		404	Yes	5/4	5/4	5/4/07	Appropriations; supplemental; multidepartment supplemental for fiscal year 2006-2007; provide for. **(Sen. R. Jelinek)**
8	4143		Yes	5/10	5/11	5/11/07	Watercraft; violations; certain marine safety misdemeanor violations; designate as state civil infraction. **(Rep. S. Bieda)**

* - I.E. means Legislature voted to give the Act immediate effect.
** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.
*** - See Act for applicable effective date.
+ - Line item veto
# - Tie bar

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
9	4482		Yes	5/18	5/18	5/18/07	Human services; other; certain family independence program eligibility and sanction for certain noncompliance; clarify. **(Rep. B. Clack)**
10	4327		Yes	5/24	5/24	5/24/07	Crimes; other; prohibition against selling tomatoes that are not vine-ripened; repeal. **(Rep. D. Spade)**
11	4322		Yes	5/24	5/24	5/24/07	Liquor; licenses; issuance of on-premises liquor license for certain universities; expand to include certain entities located in Oakland community college and Macomb community college. **(Rep. B. Farrah)**
12		400	Yes	5/29	5/29	5/29/07 #	Economic development; plant rehabilitation; definition of industrial property; modify. **(Sen. J. Allen)**
13	4629		Yes	5/29	5/29	5/29/07 #	Economic development; plant rehabilitation; strategic response center; provide for definition. **(Rep. G. McDowell)**
14	4721		Yes	5/29	5/29	5/29/2007	Environmental protection; water pollution; baseline environmental assessment fee; extend sunset. **(Rep. D. Bennett)**

* - I.E. means Legislature voted to give the Act immediate effect.
** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.
*** - See Act for applicable effective date.
+ - Line item veto
# - Tie bar

MICHIGAN ADMINISTRATIVE CODE TABLE
(2007 SESSION)

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(i) Other official information considered necessary or appropriate by the State Office of Administrative Hearings and Rules."

The following table cites administrative rules promulgated during the year 2000, and indicates the effect of these rules on the Michigan Administrative Code (1979 ed.).

MICHIGAN ADMINISTRATIVE CODE TABLE
(2007 RULE FILINGS)

R Number	Action	2007 MR Issue	R Number	Action	2007 MR Issue	R Number	Action	2007 MR Issue
32.71	A	10	325.2657	*	3	339.22609	*	2
32.72	A	10	325.2658	*	3	339.22613	*	2
32.73	A	10	325.52601	A	10	339.22615	*	2
32.74	A	10	325.52602	A	10	339.22617	*	2
32.75	A	10	325.60025	*	3	339.22631	*	2
32.76	A	10	336.1660	A	2	339.22639	R	2
32.77	A	10	336.1661	A	2	339.22641	R	2
32.78	A	10	338.471a	*	4	339.22645	*	2
32.79	A	10	338.472	*	4	339.22651	*	2
32.8	A	10	338.473	*	4	339.22652	A	2
32.81	A	10	338.473a	*	4	339.22653	R	2
32.82	A	10	338.473d	*	4	339.22654	R	2
32.83	A	10	338.474a	*	4	339.22655	R	2
32.84	A	10	338.475	*	4	339.22659	*	2
32.85	A	10	338.479a	*	4	339.22663	R	2
32.86	A	10	338.489	*	4	339.22664	R	2
32.87	A	10	338.3041	*	4	339.22665	*	2
32.88	A	10	338.3043	*	4	388.1	A	6
32.89	A	10	338.3044	*	4	388.2	A	6
205.56	*	6	338.3102	*	4	388.3	A	6
205.72	*	6	338.3120	*	4	388.4	A	6
205.126	*	6	338.3123	*	4	388.5	A	6
205.127	*	6	338.3125	*	4	388.6	A	6
205.136	*	6	338.3132	*	4	388.7	A	6
281.421	A	3	338.3154	*	4	388.8	A	6
281.422	A	3	338.3161	*	4	388.9	A	6
281.423	A	3	338.3162	*	4	388.1	A	6
281.424	A	3	338.3162b	*	4	388.11	A	6
281.425	A	3	338.3162c	*	4	388.12	A	6
281.426	A	3	338.3162d	*	4	388.13	A	6
281.427	A	3	339.22203	*	2	388.14	A	6
281.428	A	3	339.22213	*	2	388.15	A	6
281.429	A	3	339.22601	*	2	388.16	A	6
325.2651	*	3	339.22602	*	2	388.17	A	6
325.2652	*	3	339.22603	*	2	388.18	A	6
325.2653	*	3	339.22604	*	2	400.9101	*	2
325.2654	*	3	339.22605	*	2	400.9306	*	2
325.2655	*	3	339.22606	A	2	400.9401	*	2
325.2656	*	3	339.22607	*	2	400.9501	*	2

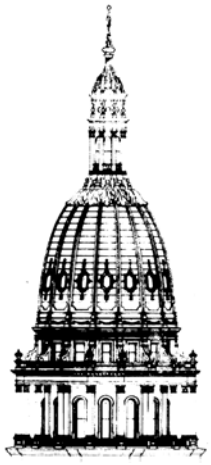
(* Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

R Number	Action	2007 MR Issue	R Number	Action	2007 MR Issue	R Number	Action	2007 MR Issue
400.12101	*	2	418.10202	*	6	431.4180	*	9
400.12202	*	2	418.10401	*	6	432.21305	*	5
400.12214	A	2	418.10404	*	6	432.21313	*	5
400.12310	*	2	418.10416	*	6	432.21316	*	5
400.12312	*	2	418.10504	A	6	432.21317	*	5
400.12605	*	2	418.10505	A	6	432.21326	*	5
408.43a	*	4	418.10902	*	6	432.21327	*	5
408.43i	*	4	418.10922	*	6	432.21331	*	5
408.43k	*	4	418.101002	*	6	432.21332	*	5
408.43m	*	4	418.101002b	A	6	432.21333	*	5
408.43q	*	4	418.101004	*	6	432.21335	*	5
408.61	*	8	418.101005	*	6	432.21336	*	5
408.65	*	8	418.101016	*	6	432.21406	*	5
408.802	*	8	418.101017	R	6	432.21408	*	5
408.806	*	8	418.101018	R	6	432.21410	*	5
408.833	*	8	418.101019	R	6	432.21412	*	5
408.852	*	8	418.101502	R	6	432.21413	*	5
408.882	*	8	418.101504	*	6	432.21416	*	5
408.891	*	8	421.1101	*	4	432.21417	*	5
408.42602	*	5	421.1103	*	4	432.21418	*	5
408.42605	*	5	421.1104	*	4	432.21516	*	5
408.42608	*	5	421.1108	*	4	432.21520	*	5
408.42609	*	5	421.1109	*	4	432.21609	*	5
408.42616	*	5	421.1110	*	4	432.21617	*	5
408.42624	R	5	421.1111	*	4	432.21621	*	5
408.42625	R	5	421.1301	*	4	432.21622	*	5
408.42628	*	5	421.1301	*	4	432.21623	*	5
408.42629	*	5	421.1302	*	4	432.21805	*	5
408.42634	*	5	421.1304	*	4	432.21811	*	5
408.42636	*	5	421.1305	*	4	432.22004	*	5
408.42648	*	5	421.1307	*	4	432.22005	*	5
408.42651	*	5	421.1314	*	4	432.22006	*	5
408.42655	*	5	421.1315	*	4	432.22007	*	5
408.42801	A	5	421.1316	*	4	436.1629	*	9
408.42804	A	5	431.2090	*	9	460.2701	A	3
408.42806	A	5	431.2120	*	9	460.2702	A	3
408.42809	A	5	431.3075	*	9	460.2703	A	3
418.56	*	4	431.3110	*	9	460.2704	A	3
418.10107	*	6	431.4001	*	9	460.2705	A	3

(***** Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

R Number	Action	2007 MR Issue
460.2706	A	3
460.2707	A	3
500.2211	A	9
500.2212	A	9
550.111	A	4
550.112	A	4
550.301	A	4
550.302	A	4
500.2201	A	9
500.2202	A	9

(***** Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)



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